FEDERAL REGISTER

Vol. 84 Monday,
No. 130 July 8, 2019

Pages 32255–32606

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0189; Product Identifier 2019–NM–001–AD; Amendment 39–19672; AD 2019–12–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. This AD was prompted by the reported loss of an elevator spring tab balance weight prior to takeoff. This AD requires inspecting the two balance weights and the two hinge arms on each elevator spring tab, and corrective actions if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 12, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0189.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0189; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. The NPRM published in the **Federal Register** on April 4, 2019 (84 FR 13148). The NPRM was prompted by the reported loss of an elevator spring tab balance weight prior to takeoff. The NPRM proposed to require inspecting the two balance weights and the two hinge arms on each elevator spring tab, and corrective actions if necessary.

The FAA is issuing this AD to address tolerance stack-up between the balance weight and the hinge arm that can allow the attachment bolts to fret with the hinge arm and result in wear, fracture, and loss of the spring tab balance weight. Loss of the spring tab balance weight can lead to unacceptable flutter margins and loss of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–30, dated November 7, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. The MCAI states:

> One operator has reported the loss of an elevator spring tab balance weight prior to takeoff. An investigation found that clearances, due to tolerance stack-up between balance weight and hinge arm, allow the attachment bolts to fret with the hinge arm causing wear and potentially progressing to fracture and loss of the spring tab balance weight. The loss of a spring tab balance weight could result in unacceptable flutter margins and loss of the aeroplane.
>
> This [Canadian] AD mandates a one-time [detailed] inspection to verify the spring tab balance weights are securely attached on both the left hand and right hand spring tab assemblies. If any of the balance weights are found loose, instructions are given to repair any damage to the hinge arm, and to add a solid shim between balance weight and hinge arm to eliminate any potential gap, and to specify balance weight attachment hardware that has low susceptibility to hydrogen embrittlement.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0189.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International stated that it agrees with the intent of the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 8–55–27, Revision A, dated

August 15, 2018. This service information describes procedures for inspecting the two balance weights and the two hinge arms on each elevator spring tab, and corrective actions including inspecting the holes in the hinge arm, inspecting the hinge arm for corrosion and chafing, installing bushings and a solid shim, replacing the hinge arm, repairing damage to the hinge arm, and permanently securing the mass balance.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 47 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$7,990

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 18 work-hours × $85 per hour = $1,530	$0	Up to $1,530.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–12–17 Bombardier, Inc.: Amendment 39–19672; Docket No. FAA–2019–0189; Product Identifier 2019–NM–001–AD.

(a) Effective Date

This AD is effective August 12, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by the reported loss of an elevator spring tab balance weight prior to takeoff. The FAA is issuing this AD to address tolerance stack-up between the balance weight and the hinge arm that can allow the attachment bolts to fret with the hinge arm and result in wear, fracture, and loss of the spring tab balance weight. Loss of the spring tab balance weight can lead to unacceptable flutter margins and loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Actions

Within 600 flight hours after the effective date of this AD, perform a detailed inspection of the two balance weights and a detailed inspection of the two hinge arms on each elevator spring tab (left hand and right hand), in accordance with Section 3.B, Part A, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(1) If any of the balance weight attachment locknuts, part number (P/N) MS 21042–4, is found fractured, loose, or missing: Before further flight conduct the rectification in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(2) If the balance weight is found not secure: Within 60 flight hours after the inspection required by paragraph (g) of this AD, repair any damage to the hinge arm and permanently secure the mass balance, in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(3) If the balance weight is found secure: Within 5,000 flight hours after the inspection required by paragraph (g) of this AD, repair any damage to the hinge arm and permanently secure the mass balance, in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(4) Where Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018, specifies to contact Bombardier for appropriate action: Before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (i)(2) of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g), (g)(2), (g)(3), and (g)(4) of this AD, if those actions were performed before the effective date of this AD using Section 3.B of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, dated April 17, 2018, provided that within 600 flight hours after the effective date of this AD, a detailed visual inspection of the balance weight locknuts, P/N MS 21042–4, is performed in accordance with Section 3.B, Part C, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018, and the rectification is performed before further flight for any fractured, loose, or missing balance weight attachment locknuts, P/N MS 21042–4, in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–30, dated November 7, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0189.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on June 21, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14412 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0496; Product Identifier 2019–NM–055–AD; Amendment 39–19671; AD 2019–12–16]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a report that the capability of the diagonal struts fitted at a certain frame is below the expected design specifications. This AD requires replacing the original diagonal struts at a certain frame with new, improved parts, as specified in an European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective July 23, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 23, 2019.

The FAA must receive comments on this AD by August 22, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov*.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0496; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0065, dated March 27, 2019 (''EASA AD 2019–0065'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states:

> Results of new additional tests, performed on the current diagonal struts fitted at fuselage frame (FR) 102 on A350–941 aeroplanes, determined that the capability of the affected parts is below the expected design specifications.
>
> This condition, if not corrected, could affect the structural integrity of the rear cone of the fuselage.
>
> To address this potential unsafe condition, Airbus designed new diagonal struts (serviceable parts), approved by Airbus mod 108588, and issued the [service bulletin] SB to provide instructions for the in-service replacement of the affected parts.
>
> For the reasons described above, this [EASA] AD requires replacement of the affected parts at fuselage FR102 with serviceable parts. This [EASA] AD also prohibits (re)installation of affected parts.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0065 describes procedures for replacing the original diagonal struts at frame 102 with new, improved parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the agency evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2019–0065 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0065 is incorporated by reference in the FAA final rule. This AD, therefore, requires compliance with the provisions specified in EASA AD 2019–0065, except for any differences identified as exceptions in the regulatory text of this AD. Service information specified in EASA AD 2019–0065 that is required for compliance with EASA AD 2019–0065 is available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0496.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0496; Product Identifier 2019–NM–055–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

The FAA will post all comments the agency receives, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this AD.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
5 work-hours × $85 per hour = $425	$37,500	$37,925

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Will not affect intrastate aviation in Alaska; and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–12–16 Airbus SAS: Amendment 39–19671; Docket No. FAA–2019–0496; Product Identifier 2019–NM–055–AD.

(a) Effective Date

This AD becomes effective July 23, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019–0065, dated March 27, 2019 (''EASA AD 2019–0065'').

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that the capability of the diagonal struts fitted at fuselage frame 102 is below the expected design specifications. The FAA is issuing this AD to address diagonal struts that are below the expected design specifications, which could affect the structural integrity of the rear cone of the fuselage.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0065.

(h) Exceptions to EASA AD 2019–0065

The ''Remarks'' section of EASA AD 2019–0065 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance* (*RC*): For any service information referenced in EASA AD 2019–0065 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Aviation Safety Agency (EASA) AD 2019–0065, dated March 27, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0065, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this EASA AD at the FAA, Transport Standards Branch, 2200

South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0065 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0496.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on June 21, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14413 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0469; Product Identifier 2019–CE–028–AD; Amendment 39–19664; AD 2019–12–09]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. Flight Display System Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain part-numbered Rockwell Collins, Inc. (Rockwell Collins) FDSA–6500 flight display system applications installed on airplanes. This AD imposes operating limitations on the traffic collision avoidance system (TCAS) by revising the Limitations section of the airplane flight manual (AFM) or AFM supplement (AFMS) and installing a placard on each aircraft primary flight display. This AD was prompted by a conflict between the TCAS display indications and aural alerts that may occur during a resolution advisory (RA) scenario. The FAA is issuing this AD to require actions that address the unsafe condition on these products.

DATES: This AD is effective July 23, 2019.

The FAA must receive comments on this AD by August 22, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0469; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nhien Hoang, Aerospace Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4157; fax: (316) 946–4107; email: *nhien.hoang@faa.gov* or *Wichita-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA was notified that a conflict may occur between the TCAS primary cockpit display indications and the aural alerts during an RA scenario on specific part-numbered Rockwell Collins FDSA–6500 flight display system applications. These applications may be installed on, but not limited to, Bombardier Inc. Model CL–600–2B16 (604 variant) airplanes and Textron Aviation Inc. Models 525B, B200, B200C, B200CGT, B200GT, B300, B300C, and C90GTi airplanes.

During testing of a full flight simulator on a development program, the TCAS fly-to/avoidance cue indication on the primary cockpit displays conflicted with other TCAS system information, such as aural cues, during an RA scenario. While the aural alert will provide the pilot with accurate information to resolve the RA, that information is not accurately represented by the TCAS fly-to/avoidance cue display. Specifically, the TCAS fly-to/avoidance cue is displayed relative to the aircraft horizon line instead of the aircraft symbol. Rockwell Collins determined that the data from the TCAS is being translated incorrectly by the FDSA–6500 software prior to display of the RA pitch indications.

This condition, if not addressed, could lead to the pilot over-correcting or under-correcting for aircraft separation and may result in a mid-air collision. The manufacturer is developing a software update to correct this condition. The actions required by this AD are intended to prevent conflicting TCAS information by prohibiting flight operation with RA functionality enabled. The FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information

The FAA reviewed Rockwell Collins Operator Bulletin OPSB 0193–19R1, Revision 1, dated April 3, 2019. The service information describes the unsafe condition and provides examples of different scenarios that could occur with the TCAS indication conflicts. The service information also contains instructions for determining the part number of the FDSA–6500 installation.

FAA's Determination

The FAA is issuing this AD because it evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD prohibits operation with the TCAS in TA/RA mode by requiring a revision to the Limitations section of the AFM or AFMS and by fabricating and installing a placard on each aircraft primary flight display. An owner/operator (pilot) may revise the AFM or the AFMS and fabricate and install the required placard, and the owner/operator must enter compliance with the applicable paragraphs of the AD into the aircraft records in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). A pilot may perform these actions because they can be performed equally well by a pilot or a mechanic. This is an exception to our standard maintenance regulations.

Interim Action

The FAA considers this AD interim action. The operating limitation required by this AD will immediately address the unsafe condition. However, Rockwell Collins is developing a software upgrade to correct the unsafe condition and eliminate the need for the

operating limitation required by this AD action. Because the operating limitation required by this AD addresses the unsafe condition, any rulemaking with a software upgrade would allow for public notice and comment. Thus, the FAA will consider future rulemaking when the software upgrade becomes available.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a conflict between the displayed indications and the TCAS aural alert could lead to the pilot over-correcting or under-correcting for aircraft separation and result in a mid-air collision. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the Docket Number FAA–2019–0469 and Product Identifier 2019–CE–028–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact it receives about this final rule.

Costs of Compliance

The FAA estimates that this AD affects 932 FDSA–6500 flight display system applications installed on 311 airplanes worldwide. The number of FDSA–6500 applications installed on airplanes on the U.S. Registry is unknown.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on operators worldwide
Revise the Limitations section of the AFM or AFMS.	.5 work-hour × $85 per hour = $42.50.	Not applicable	$42.50 (per airplane)	$13,217.50
Fabricate and install a placard	.5 work-hour × $85 per hour = $42.50.	Negligible	$42.50 (per primary flight display).	39,610

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–12–09 Rockwell Collins, Inc.: Amendment 39–19664 ; Docket No. FAA–2019–0469 Product Identifier 2019–CE–028–AD.

(a) Effective Date

This AD is effective July 23, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rockwell Collins, Inc. (Rockwell Collins) Flight Display System Application FDSA–6500 part numbers 810–0234–1H0001, 810–0234–1H0002, 810–0234–1H0003, 810–0234–2H0001, 810–0234–2C0001, 810–0234–2C0002, and 810–0234–4B0001. These appliances are installed on, but not limited to, Bombardier Inc. Model CL–600–2B16 (604 variant) airplanes and Textron Aviation Inc. Models 525B, B200, B200C, B200CGT, B200GT, B300, B300C, and

C90GTi airplanes, certificated in any category.

Note 1 to paragraph (c) of this AD: Rockwell Collins Operator Bulletin OPSB 0193–19R1, Revision 1, dated April 3, 2019, contains additional information related to the Applicability of this AD.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 34; Navigation.

(e) Unsafe Condition

This AD was prompted by a conflict between the traffic collision avoidance system (TCAS) primary display indications and aural alerts during a resolution advisory (RA) scenario. The FAA is issuing this AD to prevent conflicting TCAS information. The unsafe condition, if not addressed, could result in the pilot under-correcting or over-correcting and may lead to inadequate aircraft separation and a mid-air collision.

(f) Compliance

Comply with this AD within 30 days after July 23, 2019 (the effective date of this AD), unless already done.

(g) Operating Limitations

(1) Revise the airplane flight manual (AFM) or AFM supplement (AFMS) by adding the following text to the Limitations section: For TCAS II installations, during flight, do not operate TCAS in the ''TA/RA'' mode; TCAS may only be operated in ''TA Only'' mode.

Note 2 to paragraphs (g) and (h) of this AD: In ''TA/RA'' mode, the TA stands for traffic advisory and RA stands for resolution advisory.

(2) Fabricate a placard for each aircraft primary flight display, using at least ⅛ inch letters, with the following text: TCAS Flight Ops—TA Only mode (TA/RA mode prohibited).

(3) Install the placard on the bottom of each aircraft primary flight display bezel in the area depicted in figure 1 to paragraph (g)(3) of this AD.

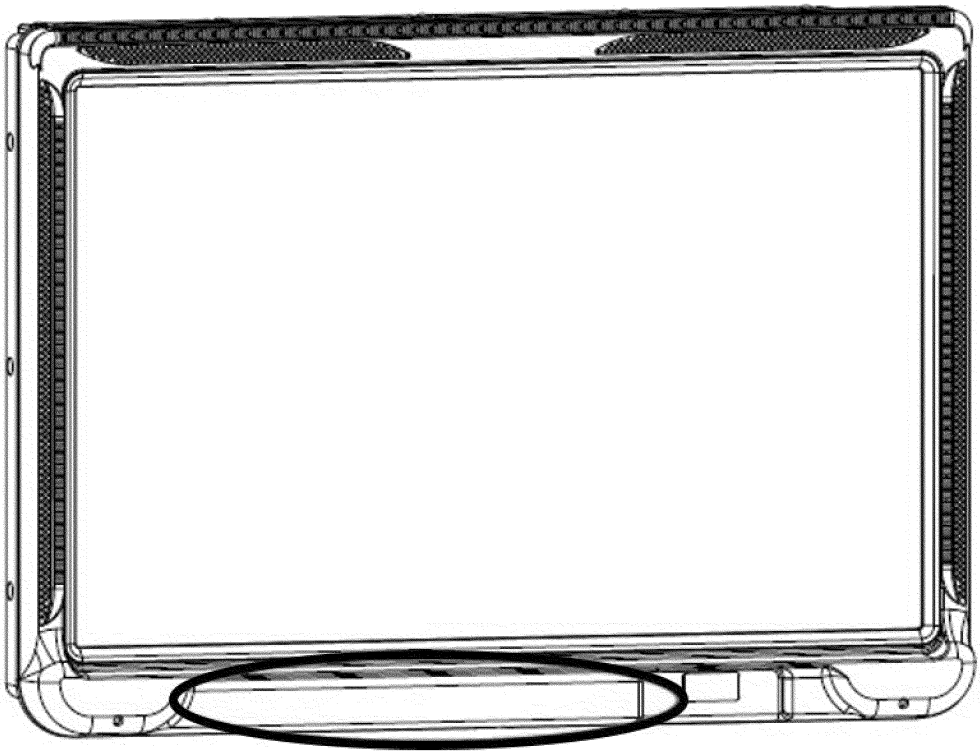

Figure 1 to paragraph (g)(3) of this AD; placard location on bezel

(4) In addition to the provisions of 14 CFR 43.3 and 43.7, the actions required by paragraph (g)(1) through (3) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417. This authority is not applicable to aircraft being operated under 14 CFR part 119.

(h) Special Flight Permit

A special flight permit may be issued with the following limitation: Flight operation with the TCAS II in ''TA/RA'' mode is prohibited. Flight operation with the TCAS is only permitted in ''TA Only'' mode.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Nhien Hoang, Aerospace Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4157; fax: (316) 946–4107; email: *nhien.hoang@faa.gov* or *Wichita-COS@faa.gov*.

(2) Rockwell Collins Operator Bulletin OPSB 0193–19R1, Revision 1, dated April 3, 2019, contains additional information related to this AD. You may obtain copies of this service information by contacting Rockwell Collins, Inc. at Collins Aviation Services, 400 Collins Road NE, M/S 164–100, Cedar Rapids, IA 52498–0001; telephone: 888–265–5467 (U.S.) or 319–265–5467; fax: 319–295–4941 (outside U.S.); email: *techmanuals@rockwellcollins.com*; internet: *http://www.rockwellcollins.com/Services_and_Support/Publications.aspx*.

Issued in Fort Worth, Texas, on June 28, 2019.

James A. Grigg,

Acting Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–14307 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0019; Product Identifier 2018–NM–130–AD; Amendment 39–19657; AD 2019–12–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports of low clearance between the variable frequency generator (VFG) power feeder cables and adjacent hydraulic lines and/or fuel lines in the aft equipment bay, which could cause chafing damage. This AD requires modifying the routing of the VFG power feeder cables and harnesses in the aft equipment bay. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 12, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 12, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* internet: *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0019.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0019; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on February 22, 2019 (84 FR 5609). The NPRM was prompted by reports of low clearance between the VFG power feeder cables and adjacent hydraulic lines and/or fuel lines in the aft equipment bay, which could cause chafing damage. The NPRM proposed to require modifying the routing of the VFG power feeder cables and harnesses in the aft equipment bay.

The FAA is issuing this AD to address chafing damage in the aft equipment bay, which could result in a hydraulic/fuel leak and electrical arcing as an ignition source, and could cause an in-flight fire.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–22, dated August 2, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> Several aircraft have been discovered with low clearance between the Variable Frequency Generator (VFG) cables and hydraulic/fuel lines in the Aft Equipment Bay which may lead to chafing between the VFG cables and the hydraulic/fuel lines. Chafing may result in damage that could lead to a hydraulic/fuel leak and electrical arcing as an ignition source. This condition, if not corrected, could result in an in-flight fire.
>
> This [Canadian] AD mandates a modification to the routing of the VFG power feeder cables and harnesses, to ensure the required clearance between the VFG cables and hydraulic/fuel lines in the Aft Equipment Bay.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0019.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response.

Request To Refer to Revised Service Information

Flexjet stated that the routing modification in the proposed AD refers to ''outdated Service Bulletins SB 700–24–089 R1, SB 700–24–6014 R1, 700–1A11–24–028 R1 [and] 700–24–5014 R1.'' Flexjet added that on September 27, 2018, all service information referenced in the NPRM was updated to Revision 2. Flexjet noted that Revision 2 of the service information merely clarifies certain procedures.

The FAA infers that the commenter is asking that this AD refer to the following Bombardier service information as the appropriate source for accomplishing the required actions:

- Service Bulletin 700–24–089, Revision 02, dated September 27, 2018.
- Service Bulletin 700–24–6014, Revision 02, dated September 27, 2018.
- Service Bulletin 700–1A11–24–028, Revision 02, dated September 27, 2018.
- Service Bulletin 700–24–5014, Revision 02, dated September 27, 2018.

The FAA agrees with the commenter's request. The FAA has included the Bombardier service information listed above as the appropriate source of service information for accomplishing the required actions. The FAA has determined that no additional work is required for airplanes that have accomplished the actions specified in Revision 01 of the referenced service information. Revision 02 of the referenced service information clarifies the language in certain steps and adds notes to certain steps. The FAA has added Revision 01 of the referenced service information to paragraphs (h)(1) and (h)(2) of this AD to provide credit for actions done before the effective date of this AD.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information for Bombardier, Inc. Model BD–700–1A10 airplanes.

- Service Bulletin 700–24–089, Revision 02, dated September 27, 2018.
- Service Bulletin 700–24–6014, Revision 02, dated September 27, 2018.

Bombardier has issued the following service information for Bombardier, Inc. Model BD–700–1A11 airplanes.

- Service Bulletin 700–1A11–24–028, Revision 02, dated September 27, 2018.
- Service Bulletin 700–24–5014, Revision 02, dated September 27, 2018.

This service information describes procedures for modifying the routing of the VFG power feeder cables and harnesses in the aft equipment bay to ensure the required clearance between the cables and the hydraulic lines and/or fuel lines. These documents are distinct since they apply to different airplane models and configurations.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 112 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 5 work-hours × $85 per hour = Up to $425	Up to $606	Up to $1,031	Up to $115,472.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–12–02 Bombardier Inc.: Amendment 39–19657; Docket No. FAA–2019–0019; Product Identifier 2018–NM–130–AD.

(a) Effective Date

This AD is effective August 12, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9002 through 9831 inclusive, and 9998.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by reports of low clearance between the variable frequency generator (VFG) power feeder cables and adjacent hydraulic lines and/or fuel lines in the aft equipment bay, which could cause chafing damage. The FAA is issuing this AD to address this unsafe condition, which could result in a hydraulic/fuel leak and electrical arcing as an ignition source, and could cause an in-flight fire.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Routing Modification

Within 24 months after the effective date of this AD: Modify the routing of the VFG

power feeder cables and harnesses in the aft equipment bay to ensure the required clearance between the cables and the hydraulic lines and/or fuel lines, in accordance with the Accomplishment Instructions of the applicable service information listed in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *Service information for modification*

Airplane Model/Serial No.	Bombardier Service Information
BD-700-1A10 9002 through 9312 inclusive; 9314 through 9380 inclusive; 9384 through 9429 inclusive	Service Bulletin 700-24-089, Revision 02, dated September 27, 2018
BD-700-1A10 9313, 9381, and 9432 through 9831 inclusive	Service Bulletin 700-24-6014, Revision 02, dated September 27, 2018
BD-700-1A11 9127 through 9383 inclusive; 9389 through 9400 inclusive; 9404 through 9431 inclusive; and 9998	Service Bulletin 700-1A11-24-028, Revision 02, dated September 27, 2018
BD-700-1A11 9386, 9401, and 9445 through 9831 inclusive	Service Bulletin 700-24-5014, Revision 02, dated September 27, 2018

(h) Credit for Previous Actions

(1) This paragraph provides credit for the modification required by paragraph (g) of this AD for airplanes on which the modification specified in Bombardier Service Bulletin 700–24–6014 was performed before the effective date of this AD using Bombardier Service Request for Product Support Action (SRPSA) 000236314.

(2) This paragraph provides credit for the modification required by paragraph (g) of this AD, if the modification was performed before the effective date of this AD using the service information specified in paragraphs (h)(2)(i) through (h)(2)(iv) of this AD.

(i) Bombardier Service Bulletin 700–24–089, dated April 25, 2018, or Revision 01, dated August 21, 2018.

(ii) Bombardier Service Bulletin 700–24–6014, dated April 25, 2018, or Revision 01, dated August 21, 2018.

(iii) Bombardier Service Bulletin 700–1A11–24–028, dated April 25, 2018, or Revision 01, dated August 21, 2018.

(iv) Bombardier Service Bulletin 700–24–5014, dated April 25, 2018, or Revision 01, dated August 21, 2018.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–22, dated August 2, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0019.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 700–1A11–24–028, Revision 02, dated September 27, 2018.

(ii) Bombardier Service Bulletin 700–24–089, Revision 02, dated September 27, 2018.

(iii) Bombardier Service Bulletin 700–24–5014, Revision 02, dated September 27, 2018.

(iv) Bombardier Service Bulletin 700–24–6014, Revision 02, dated September 27, 2018.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* internet: *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on June 18, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14415 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0119; Product Identifier 2018–NM–156–AD; Amendment 39–19663; AD 2019–12–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports that certain aft fuselage fittings are susceptible to cracking because they were not manufactured correctly. This AD requires replacement of those fittings with correctly manufactured parts, an eddy current inspection of certain fastener holes for cracking, and corrective actions if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 12, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0119.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0119; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: 516–287–7329; fax: 516–794–5531; email: *Aziz.Ahmed@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on March 12, 2019 (84 FR 8832). The NPRM was prompted by reports that certain aft fuselage fittings are susceptible to cracking because they were not manufactured correctly. The NPRM proposed to require replacement of those fittings with correctly manufactured parts, an eddy current inspection of certain fastener holes for cracking, and corrective actions if necessary.

The FAA is issuing this AD to address the possibility of undetected cracks developing in the aft fuselage fittings due to the absence of heat treatment, which could lead to aircraft structural failure.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–25, dated October 3, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> Bombardier Aerospace (BA) has informed Transport Canada that a batch of AFT fuselage fittings were not heat treated to the required material specification. Due to the absence of heat treatment for those parts, the affected AFT fuselage fittings have very low mechanical properties and there is a possibility for undetected cracks to develop as a result of mooring operations, which could lead to aircraft structural failure.
>
> This [Canadian] AD mandates the removal and replacement of the affected AFT fuselage fittings.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0119.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The commenter indicated support for the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 670BA–53–056, dated February 11, 2016. This service information describes, among other actions, procedures for removal and replacement of the aft fuselage fittings, and an eddy current inspection of certain fastener holes for cracking.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 12 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	(*)	$425 *	$5,100 *

* Parts cost unavailable.

The FAA has received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–12–08 Bombardier, Inc.: Docket No. FAA–2019–0119; Product Identifier 2018–NM–156–AD.

(a) Effective Date

This AD is effective August 12, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers (S/Ns) 15336 through 15343 inclusive, 15351, and 15358 through 15362 inclusive.

(2) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, S/N 19041.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports that certain aft fuselage fittings are susceptible to cracking because they were not manufactured correctly. The FAA is issuing this AD to address the possibility of undetected cracks developing in the aft fuselage fittings due to the absence of heat treatment, which could lead to aircraft structural failure.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Within 8,800 flight hours after the effective date of this AD, remove all aft fuselage fittings, replace with new aft fuselage fittings, and do an eddy current inspection of the fastener holes of frame FS1162.00 and stringers 17L, 17R, and 18L for cracking, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–53–056, dated February 11, 2016.

(h) Corrective Action for Cracking

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–25, dated October 3, 2018, for related information. This MCAI may be found in the AD docket on the internet at

http://www.regulations.gov by searching for and locating Docket No. FAA–2019–0119.

(2) For more information about this AD, contact Aziz Ahmed, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: 516–287–7329; fax: 516–794–5531; email: *Aziz.Ahmed@faa.gov*.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–53–056, dated February 11, 2016.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on June 18, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14416 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 216

[Docket No. FDA–2019–D–2733]

Compliance Policy for Certain Compounding of Oral Oxitriptan (5-HTP) Drug Products for Patients With Tetrahydrobiopterin (BH4) Deficiency; Immediately in Effect Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is announcing the availability of an immediately in effect guidance for industry entitled ''Compliance Policy for Certain Compounding of Oral Oxitriptan (5-HTP) Drug Products for Patients With Tetrahydrobiopterin (BH4) Deficiency.'' This guidance describes FDA's policy concerning the conditions under which the Agency does not generally intend to take regulatory action against a licensed pharmacist in a State-licensed pharmacy or Federal facility or a licensed physician using the bulk drug substance oxitriptan (also known as 5-hydroxytryptophan or 5-HTP) to compound oral drug products for patients with tetrahydrobiopterin (BH4) deficiency. FDA developed this guidance in response to communications from pharmacists and caregivers regarding the use of oxitriptan to treat patients with BH4 deficiency following issuance of a final rule that placed oxitriptan on the list of substances that cannot be used to compound drug products in accordance with certain compounding provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on July 8, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–2733 for ''Compliance Policy With Respect to Certain Compounding of Oral Oxitriptan (5-HTP) Drug Products for Patients With Tetrahydrobiopterin (BH4) Deficiency.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communications, Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Bldg., 4th Floor, Silver Spring, MD 20993–0002, 855–543–3784 or 301–796–3400; Fax: 301–431–6353, email: *druginfo@fda.hhs.gov*. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Tracy Rupp, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5171, Silver Spring, MD 20993, 240–402–0260.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of an immediately in effect guidance for industry entitled ''Compliance Policy for Certain Compounding of Oral Oxitriptan (5-HTP) Drug Products for Patients With Tetrahydrobiopterin (BH4) Deficiency.'' This guidance describes FDA's policy concerning the conditions under which the Agency does not generally intend to take regulatory action against a licensed pharmacist in a State-licensed pharmacy or Federal facility or a licensed physician using the bulk drug substance oxitriptan to compound oral drug products for patients with BH4 deficiency.

Section 503A of the FD&C Act (21 U.S.C. 353a) describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist in a State-licensed pharmacy or Federal facility, or by a licensed physician to qualify for exemptions from certain requirements of the FD&C Act related to FDA approval prior to marketing, current good manufacturing practice requirements, and labeling with adequate directions for use (see sections 505, 501(a)(2)(B), and 502(f)(1) of the FD&C Act (21 U.S.C. 355, 351(a)(2)(B), and 352(f)(1))). One of the conditions that must be met for a compounded drug product to qualify for these exemptions is that a licensed pharmacist or licensed physician compounds the drug product using bulk drug substances that: (1) Comply with the standards of an applicable United States Pharmacopoeia (USP) or National Formulary (NF) monograph, if a monograph exists, and the USP chapter on pharmacy compounding; (2) if such a monograph does not exist, are drug substances that are components of drugs approved by FDA; or (3) if such a monograph does not exist and the drug substance is not a component of a drug approved by FDA, appear on a list of bulk drug substances developed by FDA through regulation. (See section 503A(b)(1)(A)(i) of the FD&C Act.)

On February 19, 2019, FDA issued a final rule (84 FR 4696) (''February 19, 2019, final rule''), which established the list of bulk drug substances that can be used to compound drug products under section 503A of the FD&C Act even though they are not the subject of an applicable USP or NF monograph or a component of an FDA approved drug product (the 503A Bulks List). (See section 503A(b)(1)(A) of the FD&C Act.) The final rule, codified at § 216.23 (21 CFR 216.23), placed six bulk drug substances on the 503A Bulks List (§ 216.23(a)), and identified four others, including oxitriptan, that cannot be used to compound drug products under section 503A of the FD&C Act (§ 216.23(b)). Additional bulk drug substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of future rulemaking.

FDA developed this guidance in response to communications from pharmacists and caregivers regarding the use of oxitriptan to treat patients with BH4 deficiency following issuance of the February 19, 2019, final rule, which placed oxitriptan on the list of bulk drug substances that cannot be used to compound drug products under section 503A of the FD&C Act. According to those communications and other information available to the Agency, oxitriptan is the standard of care for the treatment of BH4 deficiency, which is caused by several different rare enzyme defects that result from gene mutations. BH4 deficiency is also known as: Primary tetrahydrobiopterin deficiency, atypical phenylketonuria (PKU), GTP cyclohydrolase (GTPCH) deficiency, 6-pyruvoyl-tetrahydropterin synthase (6-PTPS) deficiency, and dihydropteridine reductase (DHPR) deficiency. FDA did not consider BH4 deficiency during its initial review of this substance for the 503A Bulks List. Thus, this guidance addresses the conditions under which FDA does not intend to take regulatory action against a licensed pharmacist in a State-licensed pharmacy or Federal facility or a licensed physician for the use of bulk oxitriptan to compound oral drug products for the treatment of identified individual patients with BH4 deficiency provided certain conditions are met. In light of the new information regarding use of oral oxitriptan to treat BH4 deficiency, FDA is considering whether to reevaluate the exclusion of oxitriptan from the 503A Bulks List.

FDA is issuing this guidance consistent with our good guidance practices (GGP) regulation (21 CFR 10.115). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate due to the public health need for patients with BH4 deficiency to access compounded oxitriptan oral drug products (21 CFR 10.115(g)(2)). This guidance does not establish any rights for any person and is not binding on FDA or the public. Although this guidance is immediately in effect, it remains subject to comment in accordance with FDA's GGP regulation. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the document at either *https://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov*. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: July 1, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–14355 Filed 7–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2016–0989]

RIN 1625–AA01

Anchorage Regulations; Passagassawakeag River, Belfast, ME

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two special anchorage areas in the Passagassawakeag River in the vicinity of Belfast, ME. This proposed action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels less than 65 feet in length. This action is intended to increase the safety of life and property in the Passagassawakeag River in the vicinity of Belfast, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective August 7, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0989 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Mr. Craig Lapiejko, Waterways Management at First Coast Guard District, telephone (617) 223–8351, email *craig.d.lapiejko@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

In March 2016, the harbormaster submitted a draft proposal to the Belfast City Council and subsequently the town began talks with Coast Guard Sector Northern New England regarding establishment of a special anchorage area in Belfast. Subsequently, the Town of Belfast, ME Harbor Committee and the Belfast harbormaster petitioned Coast Guard Sector Northern New England to designate a special anchorage area in the Passagassawakeag River, in the vicinity of Belfast, ME. In response, on October 3, 2017, the Coast Guard published a NPRM titled ''Special Anchorage Areas; Passagassawakeag River, Belfast Bay, Belfast, Maine'' (82 FR 46004). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to establishing two special anchorages in the Passagassawakeag River. During the comment period that ended December 4, 2017, we received one comment. For the reasons discussed below, the Coast Guard is making no changes to this rule from the proposed rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 471, 2071; 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Commander, First Coast Guard District has determined that this rule will reduce the risk of vessel collisions by creating two special anchorage areas in the Passagassawakeag River in the vicinity of the northeastern portion of Belfast, ME. The purpose of this rule is to increase the safety of life and property in the Passagassawakeag River in the vicinity of Belfast, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes two special anchorage areas, referred to as special anchorage areas A and B, in the Passagassawakeag River in the vicinity of Belfast, ME. Special anchorage area A is approximately 554,800 sq. yards and is on the north side of the river located between the mouth of the Goose River and Patterson Pt, downstream of the US RT 1 Bridge. Special anchorage area B is approximately 693,889 sq. yards and located along the southern shores of the river located between the Belfast Town docks to Belfast City Park.

Vessels less than 65 feet in length, when at anchor in these special anchorage areas, will not be required to sound signals or display anchorage lights or shapes when at anchor. Additionally, mariners using these anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

The Coast Guard received one comment on our NPRM published on October 3, 2017. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The one comment was authored by a NOAA cartographer who wanted to make the Coast Guard aware of charted features within the proposed special anchorage areas. Specifically, a charted obstruction (Obstn) feature within special anchorage area A and a charted pier (jetty) in ruins within special anchorage area B.

The Coast Guard and Belfast harbormaster are aware of the charted obstructions. The town of Belfast has operated these areas as managed mooring fields for decades and places the moorings around the charted obstructions. The regulatory text appears at the end of this document. In our note to § 110.4(d), we state that all coordinates referenced use datum NAD 83 and that all anchoring in the areas is under the supervision of the town of Belfast harbormaster or other such authority as may be designated by the authorities of the Town of Belfast, Maine. Mariners using these special anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws.

Additionally during the environmental review process the Coast Guard received comments from the NOAA Habitat Conservation Division. The comments, authored by a NOAA Marine Habitat Resource Specialist, recommended an eelgrass survey be conducted to determine the presence of eelgrass beds. Additionally, the Marine Habitat Resource Specialist recommended the moorings be converted to conservation moorings that use a floating pendant in lieu of chains to prevent damage to eelgrass beds.

An eelgrass study was conducted by the City of Belfast in October, 2018. The study concluded there was no eelgrass within the proposed area. The City of Belfast expressed their intention to continuously monitor the area for potential eelgrass growth.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analysis based on those statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that vessel movement in the area will not be affected. Additionally, those using the waterway will see no adverse changes to how the waterway presently operates.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the Passagassawakeag River in Belfast, ME may be small entities, for the reasons stated above in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of two special anchorage areas in the Passagassawakeag River in the vicinity of northeastern Belfast, ME. It is categorically excluded from further review under paragraph L59 (a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.4 by adding paragraph (d) to read as follows:

§ 110.4 Penobscot Bay, Maine.

* * * * *

(d) Passagassawakeag River, Belfast Bay, Belfast, Maine—(1) *Special anchorage area A.* All of the waters enclosed by a line beginning at latitude 44°25′23″ N, longitude 068°58′55″ W; thence to latitude 44°25′30″ N, longitude 068°58′48″ W; thence to latitude 44°25′33″ N, longitude 068°59′15″ W; thence to latitude 44°25′39″ N, longitude 068°59′17″ W; thence to latitude 44°25′48″ N, longitude 068°59′57″ W; thence to latitude 44°25′46″ N, longitude 069°00′08″ W; thence to the point of beginning.

(2) *Special anchorage area B.* All of the waters enclosed by a line beginning at latitude 44°25′17″ N, longitude 068°59′00″ W; thence to latitude 44°24′56″ N, longitude 068°59′23″ W; thence to latitude 44°25′20″ N, longitude 068°59′38″ W; thence to latitude 44°25′44″ N, longitude 069°00′09″ W; thence to the point of beginning.

Note to § 110.4(d): All coordinates referenced use datum: NAD 83. All anchoring in the areas is under the supervision of the town of Belfast harbormaster or other such authority as may be designated by the authorities of the Town of Belfast, Maine. Mariners using these special anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws.

Dated: June 28, 2019.

A.J. Tiongson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2019–14428 Filed 7–5–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0537]

RIN 1625–AA00

Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the New Jersey Intracoastal Waterway. The safety zone is needed to protect participants of the Jim Whelan Open Water Festival on these navigable waters near Atlantic City, NJ, during a swim event on July 14, 2019. This regulation prohibits non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Delaware Bay or a designated representative.

DATES: This rule is effective from 5 p.m. through 9 p.m. on July 14, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0537 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Thomas Welker, U.S. Coast Guard Sector Delaware Bay, Waterways Management Division; telephone 215–271–4814, email *Thomas.J.Welker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the date of the event. We are taking immediate action to ensure the safety of participants and the general public from hazards associated with non-participant vessel movement near the swim event. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by July 14, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the rule must be in effect by July 14, 2019, to mitigate the potential safety hazards associated with the swim event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Green Whales Inc. notified the Coast Guard that it will host the inaugural Jim Whelan Open Water Festival on July 14, 2019. The event will include a 400-meter swim with up to 50 participants and a 2-kilometer swim with up to 150 participants. The swim courses are on the waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with this swim event scheduled for July 14, 2019, will be a safety concern for participants and for vessels operating within the specified waters of the New Jersey Intracoastal Waterway. The purpose of this rulemaking is to protect participants, spectators, and transiting vessels on certain waters of the New Jersey Intracoastal Waterway before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 5 p.m. until 9 p.m. on July 14, 2019. The safety zone will cover navigable waters of the New Jersey Intracoastal Waterway between the Albany Avenue (Highway 40) bridge in the southwest and New Jersey Intracoastal Waterway Daybeacon 204 in the northeast. Paragraph (a) of the regulation text below provides a detailed description of the location. The duration of the zone is intended to ensure the safety of participants and vessels on these navigable waters before, during, and after the swim event scheduled from 6 p.m. to 8 p.m. on July 14, 2019. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If the COTP Delaware Bay or a designated representative grants authorization to enter, transit through, anchor in, or remain within the safety zone, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the safety zone by Local Notice to Mariners and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The impact of this rule is not significant for the following reasons: (1) The enforcement period will last four hours when vessel traffic is usually low; (2) although non-participant persons and vessels may not enter, transit through, anchor in, or remain with the safety zone without authorization from the COTP Delaware Bay or a designated representative, surrounding channels within the New Jersey Intracoastal Waterways will remain unaffected. Persons and vessels will be able to operate in the surrounding area during the enforcement period; (3) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the

COTP Delaware Bay or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene actual notice from designated representatives.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 4 hours that will prohibit entry within certain navigable waters during a swim event. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0537 to read as follows:

§ 165.T05–0537 Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ.

(a) *Location.* The following area is a safety zone: All navigable waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ, within the polygon bounded by the following: Originating at the southeast portion of the Albany Avenue Bridge where the bridge crosses the shoreline at approximate position latitude 39°21′12″ N, longitude 074°27′23″ W; thence northeasterly along the shoreline to latitude 39°21′43″ N, longitude 074°26′41″ W; thence west across the New Jersey Intracoastal Waterway to the shoreline at latitude 39°21′42″ N, longitude 074°26′51″ W; thence west along the shoreline to latitude 39°21′41″ N, longitude 074°26′55″ W; thence southwest across the mouth of Beach Thorofare to the shoreline at latitude 39°21′33″ N, longitude 074°27′07″ W; thence southwest along the shoreline to the northeast portion of the Albany Avenue Bridge where the bridge crosses the shoreline at approximate position latitude 39°21′15″ N, longitude 074°27′24″ W; thence south along the eastern, outermost edge of the bridge to the point of origin.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This zone will be enforced from approximately (but no earlier than) 5 p.m. to approximately (but not later than) 9 p.m. on July 14, 2019.

Dated: June 28, 2019.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2019–14420 Filed 7–5–19; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2018–11]

Designation of Music Licensing Collective and Digital Licensee Coordinator

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: Pursuant to title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, and following a solicitation of proposals and public comment on those proposals, the Register is designating the entities who will perform certain functions relating to the compulsory license for digital music providers to make and distribute digital phonorecord deliveries. For the reasons published in this document, the Register designates Mechanical Licensing Collective, Inc. as the mechanical licensing collective and Digital Licensee Coordinator, Inc. as the digital licensee coordinator, including their individual proposed board members.

DATES: Effective July 8, 2019.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Steve Ruwe Assistant General Counsel, by email at *sruwe@copyright.gov,* or Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov*. Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (the ''MMA'') was signed into law.[1] Title I of the MMA addresses the efficiency and fairness of the section 115 ''mechanical'' license for the reproduction and distribution of musical works embodied in digital phonorecord deliveries, including permanent downloads, limited downloads, and interactive streams.[2] In relevant part, it eliminates the song-by-song notice of intention process for such uses and creates a new blanket compulsory licensing system for digital music providers engaged in digital phonorecord deliveries.[3] The blanket licensing structure is designed to reduce the transaction costs associated with song-by-song licensing by commercial services that strive to offer ''as much music as possible,'' while ''ensuring fair and timely payment to all creators'' of the musical works used on these digital services.[4]

The MMA directs the Register of Copyrights to designate a nonprofit entity operated by copyright owners, referred to by statute as the mechanical licensing collective (''MLC''), to administer this new blanket-licensing system beginning on the ''license availability date,'' that is, January 1, 2021.[5] As detailed further below, the MLC, through its board of directors and task-specific committees, will be responsible for a variety of duties, including receiving usage reports from digital music providers, collecting and distributing royalties associated with those uses, identifying musical works embodied in particular sound recordings, administering a process by which copyright owners can claim ownership of musical works (and shares of such works), and establishing a musical works database relevant to these activities.[6]

By statute, digital music providers will bear the reasonable costs of establishing and operating the MLC through an administrative assessment, to be determined if necessary by the Copyright Royalty Judges (''CRJs'') in a separate proceeding.[7] The MMA also allows, but does not require, the Register to designate a digital licensee coordinator (''DLC'') to represent licensees in this proceeding, to serve as a non-voting member of the MLC, and to carry out other functions.[8]

A. MLC Designation Requirements, Duties, and Functions

The entity designated as the MLC must be:

- A single nonprofit entity that is created by copyright owners to carry out its statutory responsibilities;
- ''endorsed by, and enjoy[ ] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years;'' [9]
- able to demonstrate to the Copyright Office that, by the license availability date, it will have the administrative and technological capabilities to perform the required functions; and
- governed by a board of directors and include committees that are composed of a mix of voting and non-voting members as directed by the statute.[10]

If no single entity meets each of these statutory criteria, the Register must designate as the MLC the entity that

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] *See* S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.''); *see also* H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee's efforts to review music copyright laws).

[3] The MMA retains the ability of record companies to obtain an individual download license on a song-by-song basis. 17 U.S.C. 115(b)(3).

[4] S. Rep. No. 115–339, at 4, 8.

[5] 17 U.S.C. 115(d)(2)(B), (d)(3)(B); *see also id.* at 115(e)(15).

[6] *Id.* at 115(d)(3)(C).

[7] *Id.* at 115(d)(7)(D).

[8] *Id.* at 115(d)(5)(B); *see also id.* at 115(d)(3)(D)(i)(IV), (d)(5)(C).

[9] *Id.* at 115(d)(3)(A)(ii).

[10] *Id.* at 115(d)(3)(A), (d)(3)(D)(i).

most nearly fits these qualifications.[11] After five years, the Register will commence a periodic review of this designation.[12]

The MMA enumerates a number of required functions for the MLC.[13] A core aspect of the MLC's responsibilities includes identifying musical works and copyright owners, matching them to sound recordings (and addressing disputes), and ensuring that a copyright owner gets paid as he or she should. To that end, the MLC will create and maintain a free, public database of musical work and sound recording ownership information. The MLC will administer processes by which copyright owners can claim ownership of musical works (and shares of such works), and by which royalties for works for which the owner is not identified or located are equitably distributed to known copyright owners on a market share basis after a required holding period.[14] The MLC will participate in proceedings before the CRJs to establish the administrative assessment that will fund the MLC's activities, as well as proceedings before the Copyright Office with respect to the foregoing activities.[15]

The board of the MLC shall consist of fourteen voting members and three nonvoting members.[16] Ten voting members shall be representatives of music publishers that have been assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities, and four other voting members shall be professional songwriters who have retained and exercise exclusive rights of reproduction and distribution for musical works they have authored. There are also three nonvoting members that will represent the interests of songwriters, music publishers, and digital licensees via representatives of relevant trade associations or, in the case of licensees, the DLC, if one has been designated.[17] Within one year of designation, the MLC must establish publicly available bylaws relating to the governance of the collective, following statutory criteria.[18]

By statute, the MLC board must establish three committees. First, an operations advisory committee will make recommendations concerning the operations of the collective, ''including the efficient investment in and deployment of information technology and data resources.'' [19] Second, an unclaimed royalties oversight committee will establish policies and procedures necessary to undertake a fair distribution of unclaimed royalties.[20] Third, a dispute resolution committee will establish policies and procedures for copyright owners to address disputes relating to ownership interests in musical works, including a mechanism to hold disputed funds pending the resolution of the dispute.[21]

B. DLC Designation Criteria and Functions

Similar to the MLC, the DLC must:

- Be a single nonprofit entity created to carry out certain statutory responsibilities;
- be endorsed by digital music service providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years; and
- possess the administrative and technological capabilities necessary to carry out a wide array of authorities and functions.[22]

The Register is directed to designate the DLC following substantially the same procedure described for designation of the MLC.[23] Unlike the MLC, in the event the Register is unable to identify an entity that fulfills the criteria for the DLC, the Register may decline to designate a DLC; in that event, the statutory references to the DLC go without effect unless or until a DLC is designated.[24]

The DLC is tasked with coordinating the activities of the licensees.[25] The DLC shall make reasonable, good faith efforts to assist the MLC in its efforts to locate and identify copyright owners of unmatched musical works (and shares of such works) by encouraging digital music providers to publicize the existence of the collective and the ability of copyright owners to claim unclaimed accrued royalties, including by posting contact information for the collective at reasonably prominent locations on digital music provider websites and applications, and conducting in-person outreach activities with songwriters. The DLC is authorized to participate in proceedings before the CRJs to determine the administrative assessment to be paid by digital music providers, and before the Copyright Office with respect to the blanket mechanical license.

C. Designation Process and the Role of the Copyright Office.

The Register is to designate the MLC, along with the DLC (as applicable), by publishing a notice in the **Federal Register** that sets forth ''the identity of and contact information for the . . . collective,'' and ''the reasons for the designation.'' [26] These designations are subject to the approval of the Librarian of Congress pursuant to section 702 of title 17.[27] The legislative history states that ''the Register is expected to allow the public to submit comments on whether the individuals and their affiliations meet the criteria specified in the legislation; make some effort of its own as it deems appropriate to verify that the individuals and their affiliations actually meet the criteria specified in the legislation; and allow the public to submit comments on whether they support such individuals being appointed for these positions.'' [28]

On December 21, 2018, the Office issued a Notice of Inquiry (''NOI'') setting forth the functions of the MLC and DLC and the statutory criteria for designation, and solicited proposals from entities meeting such criteria and seeking to be designated as the MLC or DLC, as well as relevant public comments.[29] The name and affiliation of each proposed board and committee member established by the MLC were

[11] *Id.* at 115(d)(3)(B)(iii).

[12] *Id.* at 115(d)(3)(B)(ii); *see also* H.R. Rep. No. 115–651, at 6 (noting that continuity is expected to be beneficial so long as the designated entity has ''regularly demonstrated its efficient and fair administration,'' whereas evidence of ''fraud, waste, or abuse,'' or failure to adhere to relevant regulations should ''raise serious concerns'' regarding whether re-designation is appropriate); S. Rep. No. 115–339, at 5–6 (same).

[13] 17 U.S.C. 115(d)(3)(C)(i), (iii) (enumerating thirteen functions, in addition to permission to administer voluntary licenses).

[14] *Id.* at 115(d)(3)(E).

[15] *Id.* at 115(d)(3)(C)(i)(IX)–(X).

[16] *Id.* at 115(d)(3)(D)(i).

[17] *Id.*

[18] *Id.* at 115(d)(3)(D)(ii).

[19] *Id.* at 115(d)(3)(D)(iv). This committee will have an equal number of musical work copyright owners and digital music provider representatives, respectively appointed by the MLC and DLC.

[20] *Id.* at 115(d)(3)(D)(v), (d)(3)(J)(ii). This committee of ten will have an equal number of musical work copyright owners and professional songwriters.

[21] *Id.* at 115(d)(3)(D)(vi), (d)(3)(H)(ii), (d)(3)(K). This committee will consist of at least six members, again equally divided among musical work copyright owners and professional songwriters.

[22] *Id.* at 115(d)(5)(A)(i)–(iii).

[23] *Id.* at 115(d)(5)(B).

[24] *Id.* at 115(d)(5)(B)(iii).

[25] *See generally id.* at 115(d)(5)(C).

[26] *Id.* at 115(d)(3)(B)(II), (d)(5)(B)(i)–(ii).

[27] *Id.* at 115(d)(3)(A)(iv) (''with the approval of the Librarian of Congress pursuant to section 702, in accordance with subparagraph (B)''); *id.* at (d)(5)(A)(iv) (same); *see id.* at 702.

[28] H.R. Rep. No. 115–651, at 5; S. Rep. No. 115–339, at 5; Conf. Rep. at 4; *see* H.R. Rep. No. 115–651, at 26 (''This requirement is not waivable by the Register and is not subject to the alternate designation language.''); S. Rep. No. 115–339, at 23 (same).

[29] 83 FR 65747 (Dec. 21, 2018) (''NOI''); *see* 17 U.S.C. 115(d)(3)(B), (d)(3)(D)(iv)–(vi), (d)(5)(B).

solicited as part of the designation process.[30]

The Office received one proposal for designation as the DLC and two proposals for designation as the MLC, which, in accordance with the NOI, the public was invited to comment upon. The response was considerable; the Office received over 600 comments addressing these proposals, including, but not limited to, musical work copyright owners endorsing one or more of the entities seeking designation. As noticed in the NOI, the Office also considered whether to utilize information meetings subject to established guidelines for such *ex parte* communications.[31] Determining that follow-up with each of the three candidates would be valuable, the Office issued such guidelines, and on May 28 and 29, the Office met with the three proponents seeking designation as the DLC or MLC, allowing the proponents to supplement their written submissions, but not to address matters wholly outside the record; summaries of those meetings were posted on the Office's website.[32]

Beyond the Office's role in designating the MLC and DLC, Congress intended to invest the Register with ''broad regulatory authority'' to create policies and conduct proceedings as necessary to effectuate the MMA.[33] The statute enumerates several regulations that the Register is specifically directed to promulgate, including regulations regarding the form of the notices of license and notices of nonblanket activity,[34] usage reports and adjustments,[35] information to be included in the musical works database,[36] requirements for the usability, interoperability, and usage restrictions of that database,[37] and the disclosure and use of confidential information.[38] The legislative history contemplates that the Register will both ''thoroughly review[ ]'' policies and procedures established by the MLC, and promulgate regulations that balance ''the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' [39]

II. Register's Designation and Analysis

A. Mechanical Licensing Collective

The Office received proposals from two entities seeking to be designated as the MLC: (1) The ''Mechanical Licensing Collective, Inc.'' referred to here as ''MLCI''; and (2) the ''American Music Licensing Collective,'' referred to here as ''AMLC.'' [40] The candidates' respective submissions take differing approaches to demonstrating compliance with the statutory criteria. MLCI provides a detailed outline of its proposed organizational structure, business plan, and overall activities. It provided flowcharts and other illustrative materials setting forth in-depth plans for executing the MLC's administrative and technological responsibilities, including managing compulsory and voluntary licenses, matching songwriters to musical works, and collecting and distributing royalties. It describes its submission as the ''music industry consensus proposal'' and contends that its selection would facilitate valuable cooperative efforts across the industry.[41] AMLC focuses more specifically on matching unidentified songwriters to their compositions for payment purposes. It argues that the expertise of its proposed board and vendors makes it best positioned to advance that goal,[42] which the Conference Report describes as ''the highest responsibility of the collective'' beyond efficient and accurate collection and distribution of royalties.[43]

The Copyright Office assessed the extent to which each candidate satisfies the statutory requirements for designation, which can be grouped into three categories: (1) Organization, board and committee composition, and governance; (2) endorsement and substantial support from musical work copyright owners; and (3) administrative and technological capabilities. As detailed below, the Office concludes that while both candidates meet the statutory criteria to be a nonprofit created to carry out its statutory responsibilities, only MLCI satisfies the endorsement criteria, and MLCI also has made a better showing as to its prospective administrative and technological capabilities. The Register is thus designating MLCI, including its individual board members, with the Librarian's approval.

As both proposals demonstrate, the new collective must undertake formidable responsibilities expeditiously and conscientiously to establish a number of operational functions critical to implementation of the new blanket licensing system. While the comprehensive MLCI proposal signals its understanding of the full scope of this project and its importance to songwriters and others in the music community, a successful collective will undoubtedly benefit from input from that broader community much in the way the MMA itself was enacted in a spirit of consensus and compromise.[44] The Register welcomes the prospect of MLCI working with the broader community of musical work copyright owners and other songwriters, as well as the DLC and individual digital music providers, to realize the promise of the MLC as envisioned by Congress.

1. Organization, Board and Committee Composition, and Governance

As the statute requires, both MLCI and AMLC are constructed as nonprofit entities created by copyright owners to carry out the MLC's statutory responsibilities.[45] The analysis below will focus on relevant board and committee composition and governance issues.

i. Board and Committee Composition

a. MLCI

In accordance with the statute, MLCI's proposed board includes four professional songwriters: Kara DioGuardi, Oak Fielder, Kevin Kadish, and Tim Nichols.[46] MLCI notes that these members were selected by a songwriter advisory panel consisting of two professional songwriters from each of the Nashville Songwriters Association International (''NSAI''), Songwriters of North America (''SONA''), Songwriters Guild of America (''SGA''), American Society of

[30] 17 U.S.C. 115(d)(3)(B)(i)(I).

[31] NOI at 65753–54.

[32] *See* U.S. Copyright Office, *Ex Parte Communications, https://www.copyright.gov/rulemaking/mma-designations/ex-parte-communications.html* (last visited June 24, 2019); NOI at 65753–54. Given the relatively robust record, with over 600 written comments received regarding the proposals, and in light of the statutory deadline, the Office elected to limit meetings to the three candidates.

[33] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; *see also* 17 U.S.C. 115(d)(12).

[34] 17 U.S.C. 115(d)(2)(A)(i), (d)(6)(A)(i).

[35] *Id.* at 115(d)(4)(A)(iv).

[36] *Id.* at 115(d)(3)(E)(ii)(V), (d)(3)(E)(iii)(II).

[37] *Id.* at 115(d)(3)(E)(vi).

[38] *Id.* at 115(d)(12)(C).

[39] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; *see also* 17 U.S.C. 115(d)(12).

[40] The incorporator's contact information for these entities are: Benjamin K. Semel, Pryor Cashman LLP, 7 Times Square, New York, NY 10036 (MCLI); Derek C. Crownover, Dickinson Wright, PLLC, 54 Music Square East, Suite 303, Nashville, TN 37203 (AMLC); and Allison Stillman, Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY 10020 (DLCI).

[41] MLCI Proposal at 5, 8.

[42] *Id.* at 2–5.

[43] Conf. Rep. at 7; H.R. Rep. No. 115–651, at 9 (same); S. Rep. No. 115–339, at 9 (same).

[44] *See, e.g.,* Conf. Rep. at 2 (''Songwriters, artists, publishers, producers, distributors, and other stakeholders involved in the creation and distribution of music collaborated with legislators in both the Senate and the House to find a path forward on music reform.'').

[45] MLCI Proposal at Ex. 1 (Certificate of Incorporation under Delaware law); AMLC Proposal at Schedule B (Certificate of Incorporation under New York law).

[46] *Id.* at 67–68 (a biography is included for each songwriter board member).

Composers, Authors and Publishers (''ASCAP''), and Broadcast Music, Inc. (''BMI'').[47] No members of the advisory panel were themselves candidates for the board or any committee.[48] NSAI reports that the panel considered nearly 300 songwriter applicants as part of this selection process.[49]

To satisfy the requirement of ten music publisher representatives, MLCI's proposed board includes the following members: Jeff Brabec (BMG); Peter Brodsky (Sony/ATV Music Publishing); Bob Bruderman (Kobalt); Tim Cohan (peermusic); Alisa Coleman (ABKCO); Scott Cutler (Pulse Music Group); Paul Kahn (Warner/Chappell Music Publishing); David Kokakis (Universal Music Publishing Group); Mike Molinar (Big Machine Music); and Evelyn Paglinawan (Concord Music). MLCI notes that these members were selected by an advisory panel comprised of professionals associated with independent music publishers.[50] The panel ''carefully vetted candidates to ensure that the representatives selected to serve on the Board (a) have the requisite expertise and experience to govern MLC; (b) individually and together faithfully reflect the entire music publisher community; and (c) are motivated to serve on the Board and understand and do not underestimate the serious responsibilities entrusted to them.'' [51] As described by MLCI, the publisher board members represent a broad range of publishing interests—from a ''thirty-employee company established and run by creatives with a catalog of approximately 10,000 songs'' to the largest global publishers.[52]

MLCI's required nonvoting board members are Danielle Aguirre (NMPA), as a representative of the nonprofit trade association of music publishers that represents the greatest percentage of the licensor market for uses of musical works in covered activities; [53] and Bart Herbison (NSAI), as a representative of a nationally recognized nonprofit trade association whose mission is advocacy on behalf of songwriters.[54] The third non-voting board member will be a representative of the DLC.[55]

MLCI also submits proposed members for each of the three statutorily required committees. For the operations advisory committee, MLCI has selected copyright owners who have substantial experience with license administration, rights management operations, and the relevant technology.[56] For the unclaimed royalties oversight committee, the proposed members likewise have extensive experience relevant to that committee's task of ''establish[ing] policies and procedures for the distribution of unclaimed accrued royalties and accrued interest.'' [57] Each publisher representative on the unclaimed royalties committee is affiliated with an independent music publisher, as opposed to a major music publisher, which will help to ensure that smaller rightsholders have a voice in MLC functions.[58] Finally, consistent with the statute, MLCI proposes a dispute resolution committee made of five professional songwriters and five musical work copyright owners.[59]

Based on the biographies and other information submitted regarding these proposed board and committee members, the Copyright Office determines that the proposed composition of MLCI's board and committees satisfies the statutory requirements, and moreover, that each of its proposed directors possesses the qualifications necessary for appointment to the board.[60] In addition, MLCI's submission indicates that its selection procedures were carefully designed to ensure transparency and input from a broad range of industry sectors, as well as to avoid any likelihood of self-selection. MLCI also designed its committee selection process such that committee members do not also serve on the board, helping guard against potential conflicts of interest or undue influence.

b. AMLC

AMLC's submission provides less information on the mechanics of its board and committee selection processes. For its professional songwriter members, AMLC's board includes Rick Carnes, Imogen Heap, Zoe Keating, and Maria Schneider.[61] For its music publisher members, AMLC's board includes Maximo Aguirre (Maximo Aguirre Music Publishing, Inc.), Wally Badarou (ISHE sarl Music), John Barker (ClearBox Rights, LLC), Marti Cuevas (Mayimba Music), Joerg Evers (Eversongs), Brownlee Ferguson (Bluewater Music Corp.), Henry Gradstein (listed as an attorney and independent publisher), Lisa Klein Moberly (Optic Noise), Ricardo Ordonez (Union Music Group), and Jeff Price (Audiam, Inc.).[62] AMLC reports that these members were selected following an ''active recruitment campaign'' and that each selected member was required to have ''proven skill sets and practical hands-on work experience'' in various industry sectors, as well as ''first-hand work experience and knowledge of music rights organizations and how they operate.'' [63]

[47] *Id.* at 67–69.

[48] *Id.* at 68; NSAI Reply at 4–5 (discussing conflicts of interest approach).

[49] NSAI Reply at 5.

[50] MLCI Proposal at 69; *see also* NSAI Reply at 4–5 (advisory selection panel contained ''only independent music publishers whose interests are best served by selecting the most efficient back office systems, and who have vast experience with potential vendors'').

[51] MLCI Proposal at 69–70 (A biography is included for each music publisher board member).

[52] *Id.* at 70.

[53] *Id.* at 74.

[54] *Id.* at 74–75.

[55] *Id.* at 75.

[56] *Id.* at 76–78 (committee members are Joe Conyers III (Songtrust and Downtown Music Publishing), Scott Farrant (Kobalt), Rell Lafargue (Reservoir Media Management), Michael Lau (Round Hill Music), John Reston (Universal Music Publishing Group), and Bill Starke (Sony/ATV Music Publishing)).

[57] 17 U.S.C. 115(d)(3)(J)(ii); *see* MLCI Proposal at 78 (''This Committee includes individuals who have experience in royalty and payment accounting and administration, have served on the boards of independent music publishing trade groups, and have litigated (on behalf of songwriters) the failure of digital music providers to pay royalties due to a claimed inability to identify or 'match' recordings to musical works.'').

[58] MLCI Proposal at 79–80 (committee members are songwriters busbee, Kay Hanley, David Lowery, Dan Navarro, and Tom Shapiro and copyright owner representatives Phil Cialdella (Atlas Music Publishing), Patrick Curley (Third Side Music), Michael Eames (PEN Music Group), Frank Liwall (The Royalty Network, Inc.), and Kathryn Ostien (The Richmond Organization/Essex Music Group)).

[59] MLCI Proposal at 84–86 (committee members are songwriters Aimée Allen, Odie Blackmon, Gary Burr, David Hodges, and Jennifer Schott and copyright owner representatives Alison Koerper (Disney Music Group), Ed Leonard (Daywind Music Group), Sean McGraw (Downtown Music Publishing), Debbie Rose (Shapiro, Bernstein & Co.), and Jason Rys (Wixen Music Publishing)).

[60] AMLC does not dispute that these proposed members possess the required qualifications. The Office received one comment from a songwriter who allegedly observed ''collusion'' while ''serving on the selection committee for the NMPA's MLC,'' without providing substantiation. *See* Michelle Shocked Reply at 1. While the Office takes such matters seriously, MLCI's submission did not list this commenter as a member of its songwriter advisory panel and other songwriters praised the selection process. *See, e.g.,* SONA Reply at 2 (signed by Michelle Lewis, a MLCI songwriter advisory panel member, and over twenty other songwriters); MLCI Proposal at Ex. 8 (statement of NSAI). In the absence of more specific information, these allegations do not factor into the Office's analysis.

[61] AMLC Proposal at 35.

[62] *Id.* at 35, 49–75 (A biography is included for each board member).

[63] *Id.* at 38. Following its meeting with AMLC, the Office understands that an initial core of board members, namely Mr. Barker, Mr. Price, Mr. Ferguson, and Ms. Moberly, served to vet additional members. *See* AMLC *Ex Parte* Meeting Summary at 22 (June 5, 2019) (''Board member searches were conducted via personal relationships, recommendations, and invitations to submit inquiries of interest via public posting on the AMLC

Continued

AMLC includes only one of the three required nonvoting board members, David Wolfert of MusicAnswers, as a representative of a nationally recognized nonprofit trade organization whose primary mission is advocacy on behalf of songwriters in the United States.[64] AMLC notes that one additional nonvoting board member will be a representative of the DLC, and another will be filled by NMPA as a representative of the nonprofit trade association of music publishers.[65]

In response, MLCI contends that AMLC's proposed board does not adequately represent the entire music publisher community, as it lacks representatives from large or mid-size publishers.[66] The Office notes, however, that AMLC has offered to replace one of its current publisher board members with a representative of a major publisher if such an organization were to request a voting seat.[67]

AMLC also submits proposed members for each of the designated committees. Unlike MLCI, some of the members on each committee include proposed board members—a structure that potentially could diminish the committees' ability to provide independent recommendations to the board.[68] As required, AMLC provides four members for the operations advisory committee, and five professional songwriters and five musical work copyright owners for the unclaimed royalties oversight committee.[69] AMLC notes that the proposed members of the latter committee ''have years of experience dealing with double claims, counter claims and registration of song data both in the US and internationally.'' [70] For the dispute resolution committee, AMLC provides three representatives of musical work copyright owners and three professional songwriters.[71]

MLCI argues that certain AMLC board members do not in fact satisfy the relevant statutory criteria.[72] MLCI specifically questions AMLC proposed board members John Barker, Joerg Evers, and Wally Badarou's status as ''publisher representatives,'' contending that the entities with which they claim affiliation do not appear to be music publishers.[73] MLCI also challenges the characterization of Henry Gradstein as an ''independent publisher'' on the ground that he is a litigation attorney for whom no publisher affiliation is provided either in AMLC's submission or on his law firm's website.[74]

The Office raised these issues in its meeting with AMLC representatives. In response, AMLC provided specific information regarding the entities with which these individuals are affiliated. AMLC stated that Mr. Barker is the owner and CEO of ClearBox Rights, LLC, an ''independent copyright administration company,'' which is the '''exclusive' agent for licensing and collection of royalties for all types of uses.'' [75] Under AMLC's interpretation, Mr. Barker would be qualified to serve on the board because he represents music publishers through his administration company.[76] AMLC further provided company names and ASCAP or BMI IPI numbers for publishing companies owned by Mr. Evers, Mr. Badarou, and Mr. Gradstein.[77]

Based on this information, the Register will assume for purposes of this designation that Mr. Evers, Mr. Badarou, and Mr. Gradstein qualify as ''representatives of music publishers.'' [78] While Mr. Gradstein in particular appears to be primarily a litigator, he is also the owner of a music publishing company. For the music publishing representatives, the statute does not appear to require that music publishing is a full-time occupation, and Mr. Gradstein has focused his career on issues relevant to his proposed board service.[79] While Mr. Barker's background similarly demonstrates relevant experience, it is not clear that he meets the statutory criteria, as MCLI raises a colorable argument that representatives of ''[e]ntities that do not have a relevant ownership interest in the copyright to musical works (either by virtue of assignment or exclusive license) do not meet the statutory criteria.'' [80] Under that reading, if Mr. Barker's company merely administers licenses on behalf of copyright owners, but has not itself been assigned copyrights, he would not constitute a publisher representative within the meaning of the statute.

Ultimately, the Copyright Office need not resolve this issue because the specific proposal of Mr. Barker does not factor heavily into the Office's assessment. Any conflict with the statute could be cured by replacing him with a publisher representative; indeed, the Office appreciates AMLC's offer to accommodate a major publisher that wishes to join its board. A greater concern, however, is the lack of specific information provided by AMLC on its membership selection processes. Even assuming that its ultimate selections would satisfy the statutory requirements, AMLC's submissions describe a somewhat *ad hoc* decision making process in this area. While many of the proposed AMLC board members demonstrate commendable experience to perform the relevant duties, the Office appreciates MLCI's more comprehensive approach to identifying and selecting potential members, who themselves each appear highly experienced and able to perform the required duties.

ii. Representation and Diversity

The Institute of Intellectual Property and Social Justice (''IIPSJ''), in comments co-signed by several dozen artists and other music industry stakeholders, urged the Register to ensure that the MLC includes ''meaningful and significant representatives from the African-American, Latino-American and Asian-American songwriting and music publishing communities, selected by such communities, and encompassing

website.''). MLCI, however, raised questions as to a lack of transparency and potential conflicts of interest in AMLC's selection process. *See* MLCI Reply at 16–18.

[64] AMLC Proposal at 35.

[65] *Id.*

[66] MLCI Reply at 18.

[67] AMLC Proposal at 35.

[68] *Id.* (AMLC's proposed Operations Advisory Committee members are Frank Liddell (Carnival Music), Caleb Shreve (Killphonic Music), and board members Brownlee Ferguson (Bluewater Music Corp.) and Jeff Price (Audiam, Inc.)).

[69] *Id.* at 35–36 (AMLC's proposed Unclaimed Royalties Oversight Committee members are songwriters Joerg Evers, Rick Carnes, Zoe Keating, Stewart Copeland, Hélène Muddiman, and Anna Rose Menken and copyright owners Ricardo Ordonez (Union Music Group), Gian Caterine (American Music Partners West), Carlos Martin Carle (Mayimba Music), Juan Hidalgo (Juan y Nelson Entertainment), Al Staehely (listed as an entertainment lawyer and copyright owner), and David Bander (Ultra Music & Ultra International Music Publishing)).

[70] *Id.* at 41.

[71] *Id.* at 36 (committee members are songwriters Wally Badarou, Imogen Heap, and Jon Siebels and copyright owners Peter Roselli (Bluewater Music Corp.), Hakim Draper (Boogie Shack Music Group), and Jonathan Segel (Copyright Owner)).

[72] MLCI Reply at 19–20.

[73] *Id.* at 20.

[74] *Id.* at 19.

[75] AMLC *Ex Parte* Meeting Summary at 6.

[76] *Id.*

[77] *Id.*

[78] 17 U.S.C. 115(d)(3)(D)(i)(I).

[79] In contrast, the songwriter board members must be ''professional[s],'' which the Office regards as a requirement that such board members must be *primarily* songwriters. *Id. at* 115(d)(3)(D)(i)(II) (regarding ''*professional* songwriters who have retained and exercise exclusive rights of reproduction and distribution with respect to covered activities with respect to musical works they have authored'') (emphasis added); *see also* MLCI Proposal at 67 (''In MLC's view, the requirement that four voting board members of MLC be ''professional songwriters'' means that the songwriter board members must be songwriters who earn a living primarily through their songwriting activities.'').

[80] MLCI Reply at 20; *see also* 17 U.S.C. 115(d)(3)(D)(i)(I).

representation from the Hip-Hop, R&B, Latin, Reggae, Jazz and Gospel/Christian music genres.'' [81] Pointing to the growing influence of Hip-Hop and Latino music, IIPSJ suggests that the statute requires ''diverse cultural representation'' for the board.[82] IIPSJ believes that the proposed boards of both MLCI and AMLC lack sufficient representation from these communities.[83]

The Office takes representation concerns seriously and agrees that they should be considered as part of the MLC board and committee selection processes. In meetings with the Office, both MLCI and AMLC expressed a commitment to ensuring diversity in their memberships, though, both questioned the premises of IIPSJ's letter with regards to the sufficiency of representation in their proposed board slates. In addition, MLCI noted that its draft bylaws ''contain a diversity provision that calls for a biannual report on the diversity of the board, including diversity as to gender/race/ethnicity, income, musical genre, geography and expertise/experience.'' [84] The report's conclusions ''are to be used by the nominating committees in choosing future candidates'' to be proposed for the board.[85] MLCI further emphasized its capacity to reach a variety of communities, noting ''the extensive participation that it has developed through its Board and Committee members and many endorsers,'' and that ''many groups supporting MLC[I] have international offices that can assist in global outreach.'' [86] AMLC responded by reiterating the diverse nature of its board members and their experience with broad array of genres and creator communities.[87] AMLC believes that its board members' experiences would prove beneficial in the development of educational and outreach efforts targeting diverse creators, including those overseas.[88] Both candidates agreed that securing engagement and trust among varied communities, musical genres, and geographical locations would prove critical to the MLC's core project of encouraging musical work copyright owners with unclaimed accrued royalties to come forward and claim such monies.

The Copyright Office recognizes the entertainment industry as a whole has been grappling with the question of how best to diversify its leadership and provide opportunities to a broader range of creators. The Office believes that the MLC can play a role in helping to advance these goals within the music industry.[89] The Office accordingly expects the designated MLC to ensure engagement with a broad spectrum of musical work copyright owners, including from those communities that IIPSJ asserts are underrepresented. The Office intends to work with the MLC to help it achieve these goals.[90]

iii. Bylaws, Conflicts of Interest, and Other Governance Issues

Both submissions address the statutory requirement to establish bylaws within one year of designation, including with respect to succession of board members.[91] MLCI has not yet adopted bylaws, but it does have draft bylaws that it will make public ''well in advance of the statutory deadline.'' [92] In addition, although it has ''not finalized a management structure for daily operations,'' MLCI has already established a number of ''foundational'' policies and procedures designed to ensure accountability, transparency, fairness and confidentiality, including that: (1) All committee recommendations will be subject to board approval; (2) annual reports will be released to the public; (3) the committees will maintain their statutory composition; (4) MLCI will maintain a public list of all unmatched works and engage in public outreach to enhance legitimate ownership claims; and (5) the board will adopt a comprehensive set of written codes, policies, and procedures to govern the board and committees.[93] MLCI also commits to ''safeguard[ing] private, sensitive, or confidential information.'' [94] With regard to successive board members, MLCI proposes that songwriter members would be appointed from a slate of candidates chosen by songwriters, and prospective music publisher members would be appointed from candidates chosen by music publishers.[95] A similar process would be followed for committees.[96] MLCI proposes that the board conduct regular elections as well as address interim vacancies though an election process based on those nominations.[97]

AMLC has adopted bylaws that detail board members' obligations with regard to related party transactions and conflicts of interest, including disclosure requirements and procedures for review by fellow board members, although ALMC recognizes that it may have ''to ameliorate or conform the bylaws'' if they are not consistent with the MMA, the Register's yet-to-be promulgated regulations, or the New York State Not-for-Profit Corporation Law.[98]

AMLC proposes that replacement board members can be nominated by either the departing member or any other voting members, and that AMLC's board would select committee members by a majority vote, but its bylaws do not otherwise detail how committee candidates will be nominated.[99] Beyond these statutorily prescribed committees, AMLC proposes four ''additional support committees''—Audit and Finance, Education and Outreach, Technology and Security, and International.[100] It appears there is some potential for overlap, as, for example, strategic technology issues appear to fall under both the Technology and Security Committee and the Operations Oversight Committee, and matters relating to budgeting, vendor contracts, and general operations appear to be germane to the Operations Oversight Committee as well as the Executive and Audit and Finance Committees.[101] The Office notes that any additional standing committees should not conflict with the functions of the statutorily mandated committees, which are subject to strict board composition requirements to ensure adequate representation of interests (*e.g.,* songwriters, digital music providers) in

[81] IIPSJ Initial at 3.

[82] *Id.* at 3–4.

[83] IIPSJ Reply at 4–6.

[84] MLCI *Ex Parte* Meeting Summary at 3 (June 4, 2019).

[85] *Id.*

[86] *Id.*

[87] AMLC *Ex Parte* Meeting Summary at 3–4, 15–17.

[88] *Id.* at 15–17.

[89] *Cf.* Cal. Corp. Code sec. 301.3 (under California law, publicly held corporations whose principal executive offices are located in California must include female board members).

[90] *See* H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15.

[91] 17 U.S.C. 115(d)(3)(D)(ii)(I).

[92] MLCI Proposal at 86; MLCI *Ex Parte* Meeting Summary at 3 (referencing draft bylaws). MLCI correctly notes that it is not required to have adopted bylaws at this stage. *See* MLCI Proposal at 115.

[93] MLCI Proposal at 86–91 (noting the board's forthcoming sets of written codes, policies, and procedures, including: Code of Conduct and Ethics; Conflict of Interest Policy; Investment Policy (including an Anti-Comingling Policy); Confidentiality Policy; Whistleblower Policy; Document Retention Policy; Technology and Security Policy; Non-Discrimination Policy; Anti-Sexual Harassment Policy; Social Media Policy; and Gift Acceptance Policy).

[94] *Id.* at 92–93.

[95] *Id.* at 87.

[96] *Id.*

[97] *Id.*

[98] AMLC Proposal at 78, 88–91 (AMLC bylaws).

[99] *Id.* at 79–80 (AMLC bylaw art. 4.3).

[100] *Id.* at 36, 85 (AMLC bylaw art. 6.5.5–6.5.8).

[101] *Id.* at 84–85 (AMLC bylaw art. 6.5.1, 6.5.4, 6.5.5, 6.5.7).

the matters handled by those committees.[102]

With respect to conflicts of interest, MLCI will require all board members and employees to comply with a conflicts policy to be adopted at a later date.[103] The policy ''will require disclosure of all actual or potential conflicts,'' including ''having a financial interest (direct or indirect) in any contemplated MLC transaction, or relationship with any counterparty to such transaction.'' [104] MLCI also states that it ''expects all associated persons to fully comply with all applicable law,'' including fiduciary and ethical obligations, and that it ''will enforce such obligations, which may include removal for cause, in the event of a demonstrated violation.'' [105]

AMLC disputes that these measures are sufficient to prevent conflicts in the event MLCI were designated. AMLC argues that there is a serious conflict of interest when a MLC board member is eligible to receive a significant portion of the accrued but unpaid royalties—a concern that AMLC believes is salient given the number of major publishers represented on MLCI's board.[106] Other commenters, some of whom appear affiliated with AMLC, raise similar concerns.[107] In response, NSAI argues that the unclaimed royalties oversight committee will protect against such concerns, noting that MLCI does not include a major publisher on that committee.[108] MLCI further suggests this concern would attach to any board member regardless of which entity is designated, noting that every copyright owner and songwriter on any designated MLC will be eligible to receive a distribution of unclaimed accrued royalties.[109]

For its part, AMLC sets forth procedures for disclosing, addressing, and documenting conflicts of interest in its bylaws.[110] It asserts that its board will consider such issues carefully in establishing governance procedures and that the unclaimed royalties committee will establish guidelines and polices to reduce conflicts.[111]

MLCI suggests that AMLC has serious conflicts of interest of its own, alleging that AMLC board members have undisclosed ties to its proposed vendors, in violation of AMLC's own bylaws.[112] These claims, echoed by NSAI,[113] involve allegations that certain AMLC board members have financial interests in the Society of Composers, Authors and Music Publishers of Canada (''SOCAN''), which owns AMLC's intended vendor partner DataClef.[114] AMLC responded that while Mr. Barker previously was in a consulting position with SOCAN, that relationship ended prior to AMLC's formation.[115] AMLC acknowledges that Mr. Price is the founder and CEO of Audiam, a company acquired by a SOCAN holding company, but asserts that the companies are managed separately and that ''Audiam is not a vendor and is not going to be one.'' [116] AMLC also generally asserted that AMLC's board members currently have ''no ties or fiduciary responsibilities to any shareholders.'' [117]

Taking all of this information into account, both MLCI and AMLC have adopted policies and procedures that appear broadly consistent with the statutory requirements on matters of governance. Both submissions show a serious commitment to transparency, accountability, and the protection of confidential information.[118]

With respect to the purported conflicts of interest of individual board members, although these claims raise serious issues, they ultimately have little impact on the Office's evaluation of the candidates' proposals. Regarding MLCI's board composition, the Office agrees that the unclaimed royalties oversight committee will help mitigate potential conflicts. As discussed below, the Office expects ongoing regulatory and other implementation efforts to further extenuate the risk of self-interest with respect to the distribution of unclaimed accrued royalties. As to the allegations regarding individual AMLC board members, a more substantial explanation of the relevant business relationships may be required if AMLC were the candidate that otherwise most nearly satisfied the statutory criteria. The Office thus need not resolve whether any specific affiliations of AMLC board members would, in fact, present material conflicts of interest with respect to its intended primary vendor.

More generally, the Copyright Office appreciates that both proponents have pledged to operate under bylaws that will address conflicts of interest and appropriate disclosures in accordance with applicable state laws and professional duties of care.[119] Following this designation process, and including through the various statutorily required rulemakings, the Register intends to exercise her oversight role as it pertains to matters of governance, including through promulgation of regulations so that the MLC's bylaws include an avenue to ensure that subsequent board member selections are made in compliance with all relevant legal requirements.[120]

2. Endorsement and Support

As noted, the MLC must be ''endorsed by, and enjoy[ ] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.'' [121] The Copyright Office made two preliminary interpretations regarding this clause in the NOI.[122] First, the Office explained that because the section 115 license applies to uses of phonorecords in the United States, the relevant market is the United States market for making and distributing phonorecords of musical works. Thus, endorsement may be shown by including musical work copyright owners located outside the United States so long as they control the relevant rights to works played or otherwise distributed in the United States. Second, the Office stated that because the statute refers to support from ''musical work copyright owners,'' the relevant support should come from parties who have a relevant ownership

[102] *See, e.g.,* 17 U.S.C. 115(d)(3)(D)(iv)–(vi); *see also* Conf. Rep. at 19 (''Since the Board of Directors and committee member requirements . . . are statutory in nature, these requirements are not waivable by the Register or subject to modification by the Board of Directors.'').

[103] MLCI Proposal at 91–92.

[104] *Id.*

[105] *Id.* at 92.

[106] AMLC Proposal at 19, 45–46.

[107] Robert Allen Reply at 3–4; Cameron Ford Reply at 1–2; MusicAnswers Reply at 1–3; Maria Schneider Reply at 1; Rhonda Seegal Reply at 2–3; SGA Reply at 5–8.

[108] NSAI Reply at 4.

[109] MLCI Reply at 33.

[110] AMLC Proposal at 89–90 (AMLC bylaw art. 14).

[111] *Id.* at 19.

[112] MLCI Reply at 30–32.

[113] NSAI Reply at 5.

[114] MLCI Reply at 30–31.

[115] AMLC *Ex Parte* Meeting Summary at 23 (AMLC further offered that ''Mr. Barker continues to have an arm's-length business relationship with SOCAN for certain collection activity'').

[116] *Id.* Despite the assertion that Audiam has its own management, AMLC does not state that the Audiam board contains *no* SOCAN executives. *See id.* (noting that Audiam's board of directors ''includes non-SOCAN executives'').

[117] *Id.*

[118] *See, e.g.,* MLCI Proposal at 88–93; AMLC Proposal at 17, 42, 78.

[119] *See, e.g.,* Del. Code Ann. tit. 8, sec. 144(a); N.Y. Not-for-Profit Corp. L. sec. 715.

[120] *See* 17 U.S.C. 115(d)(12); *see id.* at 115(d)(3)(D)(i)(I)–(IV); *see also* H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4. The Office notes that many commenters supported the Office performing a meaningful oversight role to the extent permissible under the statute. *See, e.g.,* Maria Schneider Reply at 2–3; SGA Reply at 7.

[121] 17 U.S.C. 115(d)(3)(A)(ii).

[122] NOI at 65753.

interest in the copyright to musical works (or shares of such works), in contrast to parties who do not possess any ownership interest in musical works but only the ability to administer the works. Neither MLC candidate disagrees with these conclusions.[123]

Under section 115(d)(3)(A)(ii), only those copyright owners comprising a portion of ''the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years,'' count for purposes of endorsement.[124] The Office also noted in the NOI that it understood there might be conflicting views regarding how the indicia of endorsement and support should be measured.[125] This understanding proved correct, as MLCI and AMLC offer competing interpretations. While MLCI argues that the measurement is to be based on market share and licensing revenue, AMLC disagrees. The Office will address these disputed issues of statutory construction before making its evidentiary findings.

i. Statutory Interpretation

a. Candidates' Views

AMLC argues that the endorsement provision ''should be interpreted so that the relevant 'licensor market' from which the 'greatest percentage' is taken is the endorsing group of copyright owners who, via the greatest number of licenses, have made musical works available for covered activities as measured over the preceding 3 full calendar years.'' [126] AMLC contends that the statutory language is ambiguous but that its reading is confirmed by the legislative history. It notes that ''[t]he [Senate Judiciary] Committee explained that the MLC should be 'endorsed by and enjoy[ ] support from the majority of musical works copyright owners as measured over the preceding three years.' '' [127] From this, AMLC asserts that Congress intended that ''the parties eligible to endorse the proposed MLC are the musical works copyright owners.'' [128]

AMLC also points to a separate provision of the statute, section 115(d)(3)(J), to argue that the endorsement provision ''[c]annot [r]efer to [m]arket [s]hare.'' [129] Section 115(d)(3)(J) states that after unclaimed accrued royalties have been held for the requisite period of time, the MLC is to distribute the royalties to identified copyright owners ''in a transparent and equitable manner based on data indicating the relative market shares of such copyright owners as reflected in reports of usage provided by digital music providers for covered activities for the periods in question.'' [130] AMLC notes that, unlike the endorsement provision, section 115(d)(3)(J) expressly refers to ''relative market share.'' In its view, ''[i]f Congress, in articulating the endorsement criteria, intended for the words 'licensor market' to mean 'relative market share' (or some equivalent), Congress would have included the words 'relative market share,' the methodology to calculate same and the corresponding confidentiality language it included later on when specifically referring to 'relative market share.' '' [131]

AMLC also makes the policy argument that ''[a]n inherent conflict of interest would be created if the MLC were primarily endorsed and/or constituted by the largest and/or 'major' publishers'' because, ''[s]ince unclaimed or 'black box' royalties are to be distributed based on market share, those publishers would be dis-incentivized to account to independent songwriters and independent publishers accurately, *i.e.,* the major publishers would be incentivized to create a larger 'black box' from which they could then participate.'' [132] AMLC argues that ''[w]ere [these copyright owners] to be in control of such process, the resulting situation would repeat the incentive problem involving digital music services that the statute intended to fix,'' and that ''the purposes of the MMA would not be best fulfilled if proper incentives are not aligned.'' [133]

In AMLC's view, because ''songwriters . . . are the greatest number of copyright owners relevant to and able to endorse an MLC,'' [134] endorsement should be measured by counting each musical work copyright owner as one vote.[135] As evidence of such support, it relies on a list of (in some cases, appending supporting letters from) purported endorsers.[136]

In contrast, MLCI argues that the endorsement provision is unambiguous, and that the ''only reasonable interpretation . . . is that the collective shall be the entity that has the endorsement and support of copyright owners that together received during the statutory three-year period the largest aggregate percentage of total mechanical royalties of any entity seeking designation as the collective.'' [137] MLCI primarily relies on the statutory text to assert that ''percentage of the . . . market'' means ''market share,'' that the phrase ''for uses of [musical] works in covered activities'' denotes a measurement based on usage, and that such usage should be measured by looking at licensor revenue from applicable royalty payments.[138]

MLCI contends that other potential metrics—*i.e.,* number of licenses, number of copyright owners, and number of musical works—are not supported by the legislative history and are unworkable as a practical matter.[139] It disagrees with AMLC's analysis of section 115(d)(3)(J)'s use of the phrase ''relative market share,'' arguing that that section ''supports, rather than refutes, the fact that the endorsement criterion looks to royalty market share, as both are examples of the MMA's use of such market share to guide processes under the statute.'' [140]

As a policy matter, MLCI suggests ''that the group of copyright owners with the most royalties at stake—the largest aggregate share of the royalty pool that the collective will have [the] authority to license—should voice who is entrusted with that authority.'' [141] It would ''make[ ] a mockery of the language of the statute,'' MLCI contends, to construe the provision to mean that ''owners of musical works that are not being streamed or earning royalties could be deemed to have the same market share as owners of works that are

[123] *See* AMLC Proposal at 46; MLCI Proposal at 96–97, 113–14.

[124] MLCI agrees that a ''relevant copyright owner'' is ''an owner of musical works copyrights licensed for covered activities over the preceding three full calendar years.'' MLCI Reply at 9.

[125] NOI at 65753.

[126] AMLC Proposal at 43 (emphasis omitted).

[127] *Id.* at 46 (quoting S. Rep. No. 115–339, at 22) (emphasis AMLC's).

[128] *Id.*

[129] *Id.* at 44.

[130] 17 U.S.C. 115(d)(3)(J)(II).

[131] AMLC Proposal at 44–45 (emphasis omitted) (''Generally, statutory language should be internally consistent and considered in light of full statutory context. As such, courts will generally read as meaningful 'the exclusion of language from one statutory provision that is included in other provisions of the same statute.' '') (quoting *Hamdan* v. *Rumsfeld,* 548 U.S. 557, 578 (2006), *superseded by statute on other grounds,* Military Commissions Act of 2006, Public Law 109–366, 120 Stat. 2600 (2006)).

[132] *Id.* at 45.

[133] *Id.* at 46 (contending that ''copyright owners controlling the greatest percentage of 'relative market share' were not intended to be in control of the process of locating and paying copyright owners who are owed unclaimed royalties'').

[134] *Id.* at 46–47.

[135] *See* AMLC *Ex Parte* Meeting Summary at 24 (''AMLC response is based on the number of copyright owners, not the total number of copyrights.'').

[136] AMLC Proposal at 46–48, 94–107.

[137] MLCI Proposal at 96; *see also id.* at 108; MLCI Reply at 5 (''[T]he only reasonable reading of this language is the plain English reading.'').

[138] *See* MLCI Proposal at 107–113.

[139] *Id.* at 108–113; *see* MLCI Reply at 5–6.

[140] MLCI Reply at 6–7.

[141] MLCI Proposal at 107.

streamed billions of times and earn substantial royalties.'' [142]

b. Copyright Office's Analysis

Legal Interpretation. Taking all comments into consideration, the Copyright Office concludes that the endorsement provision in section 115(d)(3)(A)(ii) mandates that the entity designated as the MLC be endorsed and supported by musical work copyright owners that together earned the largest aggregate percentage (among MLC candidates) of total royalties from the use of their musical works in covered activities in the U.S. during the statutory three-year period. In other words, the Office agrees with MLCI that the endorsement criterion is a plurality requirement based on market share, measured by applicable licensing revenue. The Office draws this conclusion from the plain meaning of the statutory text, which, after careful review of the statute as a whole, the Office concludes is unambiguous.[143]

First, the phrase ''percentage of the . . . market'' clearly refers to market share; indeed, it is the actual definition of ''market share.'' [144] And market share is ordinarily calculated using earned sales revenue.[145] Here, the statute makes clear that endorsement is a metric of ''licensor'' revenue earned specifically ''for uses of [musical] works in covered activities.'' [146] Moreover, Congress's inclusion of the phrase ''uses of [musical] works'' suggests that the proper metric is one of licensing revenue (*i.e.,* royalties), rather than numbers of licenses, copyright owners, or works. Under the compulsory license, royalties are calculated based on use, suggesting that Congress intended to define the market for ''uses'' according to the royalty revenues generated.[147]

In contrast, counting up just the number of endorsing copyright owners—from an amateur part-time songwriter whose works have been streamed a handful of times to a major music publisher that has earned millions of dollars from millions of streams of millions of works—says nothing about the actual ''uses of [the owners' musical] works.'' Such an interpretation impermissibly reads that language out of the statute.[148] Similarly, looking only to the number of works owned by endorsing copyright owners would not accurately reflect use because it does not differentiate between works streamed once or twice and works streamed millions of times. In the Office's view, the same kinds of problems exist with counting the number of licenses.

The Office is unpersuaded by AMLC's argument concerning section 115(d)(3)(J). There is no substantive distinction between the use of ''market share[ ]'' in that provision and the use of ''percentage of the . . . market'' in the endorsement provision. One is the very definition of the other. AMLC relies upon the canon of statutory interpretation under which Congress is presumed to have acted intentionally when it excludes ''language from one statutory provision that is included in other provisions of the same statute.'' [149] But that canon is inapplicable here, as the cases AMLC cites involve only the wholesale omission of an item from a statutory provision; [150] they do not speak to situations where, as here, there is no omission and Congress merely used synonyms.[151]

The Office is likewise unpersuaded that these synonyms should be read differently simply because the unclaimed royalties provision contains different details regarding calculation and confidentiality than the endorsement provision. While both provisions use a similar market share metric, the contexts are different, such that it makes sense that Congress would provide different instructions. Section 115(d)(3)(J) explains how the MLC is to distribute unclaimed royalties after the blanket license becomes available. It is unsurprising that Congress would provide detailed requirements to govern how those payments are to be allocated. In contrast, the designation of an entity to be the MLC involves a higher-level inquiry into the aggregate market share of each candidate's endorsing copyright owners. Congress could have given the Office detailed instructions as to how to perform this analysis, but it instead left the matter to the Office's expertise and reasonable discretion. There is nothing inconsistent with Congress establishing differing approaches to accomplishing these different tasks.

The legislative history does not counsel differently. The relevant language, which appears in House and Senate Judiciary Committee Reports, states that the MLC must be ''endorsed by and enjoy[ ] support from the majority of musical works copyright owners as measured over the preceding three years.'' [152] This language can best be understood as an imprecise summary of the statutory text, for if it is taken literally, it directly conflicts with the statute, which refers to ''endorse[ment] by[ ] and . . . substantial support from[ ] musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities.'' [153] For the statute to mean what the legislative history seems to say, ''substantial'' could be deleted, ''greatest percentage'' would need to be replaced with ''majority,'' and ''of the licensor market for uses of such works in covered activities'' could also be deleted. It does not seem reasonable for the Office to interpret the statute in this way.[154]

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[142] *Id.* at 110, n.31.

[143] *See Star Athletica, L.L.C.* v. *Varsity Brands, Inc.,* 137 S. Ct. 1002, 1010 (2017) (''We thus begin and end our inquiry with the text, giving each word its ordinary, contemporary, common meaning.'') (internal quotation marks omitted). AMLC incorrectly suggests that the Office ''has acknowledged an ambiguity in the statute.'' AMLC Proposal at 46. The Office only acknowledged that ''there may be conflicting views'' on the matter. NOI at 65753.

[144] *See, e.g., Market Share,* Merriam-Webster, *https://www.merriam-webster.com/dictionary/market%20share* (last visited June 24, 2019) (Market share is ''the percentage of the market for a product or service that a company supplies.''); *Market Share,* Investopedia, *https://www.investopedia.com/terms/m/marketshare.asp* (last visited June 24, 2019) (''Market share represents the percentage of an industry, or a market's total sales, that is earned by a particular company over a specified time period.'').

[145] *See, e.g., Market Share,* Merriam-Webster, *https://www.merriam-webster.com/dictionary/market%20share* (last visited June 24, 2019) (noting the formula for market share as ''Market Share = (Particular Company's Sales Revenue in Time Period X)/(Relevant Market's Total Sales Revenue in Time Period X)''); *Market Share,* Investopedia, *https://www.investopedia.com/terms/m/marketshare.asp* (last visited June 24, 2019) (noting that in calculating a company's market share, you must ''divide the company's total revenues by its industry's total sales''); *Market Share,* The American Heritage Dictionary of the English Language, *https://ahdictionary.com/word/search.html?q=market+share* (last visited June 24, 2019) (Market share is ''[t]he proportion of industry sales of a good or service that is controlled by a company.'').

[146] 17 U.S.C. 115(d)(3)(A)(ii).

[147] *See* 37 CFR 385.11, 385.21. MLCI notes that ''[p]ractically speaking, a metric based on user usage is going to align with a metric based on licensor revenues, as the statutory royalty rates for both streaming and downloading are tied to usage,'' and that ''a musical work with more usage will wind up with more royalty revenues.'' *See* MLCI Proposal at 111–12 & n.34. While not all uses are subject to the same royalty rate, the royalties are nonetheless connected to use.

[148] *See, e.g., Advocate Health Care Network* v. *Stapleton,* 137 S. Ct. 1652, 1659 (2017) (''Our practice . . . is to give effect, if possible, to every clause and word of a statute.'') (internal quotation marks omitted).

[149] AMLC Proposal at 44 (citing *Hamdan,* 548 U.S. at 578).

[150] *See Hamdan,* 548 U.S. at 578–79; *City of Chi.* v. *Envtl. Def. Fund,* 511 U.S. 328, 334–37 (1994).

[151] *See, e.g., United States* v. *Sioux,* 362 F.3d 1241, 1246 (9th Cir. 2004) (''It is an elementary principle of statutory construction that similar language in similar statutes should be interpreted similarly.'').

[152] H.R. Rep. No. 115–651, at 26; S. Rep. No. 115–339, at 22; *see also* Conf. Rep. at 18 (similar).

[153] 17 U.S.C. 115(d)(3)(A)(ii).

[154] *See, e.g., Nat'l Ass'n of Mfrs.* v. *Dep't of Def.,* 138 S. Ct. 617, 634 n.9 (2018) (''[A]mbiguous

Policy Considerations. With respect to AMLC's policy arguments, they mirror the same conflict-of-interest concerns raised by AMLC and discussed in connection with board composition. The Office takes these concerns seriously, but they do not compel a different interpretation of the plain text of the statute.[155] Rather, there are other ways that the statute addresses these issues and protects smaller independent songwriters, as the following examples illustrate.[156]

First, the statute provides for equal representation of musical work copyright owners and professional songwriters on the unclaimed royalties oversight committee, which is charged with ''establish[ing] policies and procedures for the distribution of unclaimed accrued royalties and accrued interest.'' [157] By law, any copyright owner receiving such a distribution must pay or credit to an individual songwriter no ''less than 50 percent of the payment received by the copyright owner attributable to usage of musical works (or shares of works) of that songwriter.'' [158]

Second, the statute requires the MLC to undertake a number of duties with respect to unclaimed royalties, including maintaining a public online list of unmatched musical works through which ownership can be claimed.[159] The MLC must ''engage in diligent, good-faith efforts to publicize, throughout the music industry,'' the existence of the MLC, procedures to claim unclaimed royalties, any transfer of royalties under section 115(d)(10)(B), and any pending distribution of unclaimed accrued royalties and accrued interest not less than 90 days before distribution.[160] More generally, the statute expressly requires the MLC to ''ensure that the policies and practices of the [MLC] are transparent and accountable.'' [161] The MLC must issue a detailed annual report, including describing ''how royalties are collected and distributed,'' and ''the efforts of the [MLC] to locate and identify copyright owners of unmatched musical works (and shares of works).'' [162] And every five years, the MLC must retain an independent auditor to ''examine the books, records, and operations of the [MLC]'' and prepare a report addressing, among other things, ''the implementation and efficacy of procedures'' ''for the receipt, handling, and distribution of royalty funds, including any amounts held as unclaimed royalties,'' and ''to guard against fraud, abuse, waste, and the unreasonable use of funds.'' [163]

Third, the Copyright Office has been provided with ''broad regulatory authority'' to conduct proceedings as necessary to effectuate the statute with the Librarian's approval.[164] In addition to the regulations that the Office is specifically directed to promulgate, the legislative history contemplates that the Office will ''thoroughly review[]'' policies and procedures established by the MLC.[165] The legislative history suggests that the Office promulgate the necessary regulations in a way that ''balances the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' [166] The Office intends to conduct its oversight role in a fair and impartial manner; songwriters are encouraged to participate in these future rulemakings.

Fourth, the MLC must be redesignated every five years.[167] In the legislative history, Congress explained that ''evidence of fraud, waste, or abuse, including the failure to follow the relevant regulations adopted by the Copyright Office, over the prior five years should raise serious concerns within the Copyright Office as to whether that same entity has the administrative capabilities necessary to perform the required functions of the collective,'' and that in such cases, the Office should consider selecting a new entity ''even if not all criteria are met pursuant to section 115(d)(3)(B)(iii).'' [168] The Office thus agrees that ''it seems highly implausible . . . that Congress intended that the 'licensor market support' criterion be the primary, deciding factor as to whether a full investigation and analysis by the Register and the Copyright Office of each serious [MLC] candidate is necessary.'' [169] The Office believes that, among other scenarios, if the designated entity were to make unreasonable distributions of unclaimed royalties, that could be grounds for concern and may call into question whether the entity has the ''administrative and technological capabilities to perform the required functions of the [MLC].'' [170]

Fifth, Congress has asked the Office to study the issue of unclaimed royalties and to provide a report by July 2021 that recommends best practices for the MLC to identify and locate copyright owners with unclaimed royalties, encourage copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties.[171] The MLC must give ''substantial weight'' to these recommendations when establishing its procedures to identify and locate copyright owners and to distribute unclaimed royalties.[172]

Sixth, in addition to the various ways the MLC is required to publicize unclaimed royalties,[173] the DLC must assist with publicity for unclaimed royalties by encouraging digital music providers to publicize information on the existence of the MLC and on claiming royalties on websites and applications, and conducting in-person outreach activities with songwriters.[174] The Copyright Office, too, is tasked with engaging in public outreach and

legislative history cannot trump clear statutory language.'') (internal quotation marks omitted); *R.R. Comm'n of Wis.* v. *Chi., Burlington & Quincy R.R. Co.,* 257 U.S. 563, 589 (1922) (''Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. But when taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this can not control the interpretation. Such aids are only admissible to solve doubt and not to create it.'' (internal citations omitted)); *see also Pattern Makers' League of N. Am., AFL–CIO* v. *N.L.R.B.,* 473 U.S. 95, 112 (1985) (finding ''ambiguous legislative history'' to ''fall[ ] far short of showing that the [agency's] interpretation of the [statute] is unreasonable'').

[155] *Cf. Fourth Estate Pub. Benefit Corp.* v. *Wall-Street.com, LLC,* 139 S. Ct. 881, 892 (2019) (noting that ''the statutory scheme has not worked as Congress likely envisioned,'' but that ''[u]nfortunate as [that] may be, that factor does not allow us to revise [the statute's] congressionally composed text'').

[156] *See* SGA Reply at 3 (''SGA is far more concerned with ensuring that music creator rights are fully protected against conflicts of interest and impingements upon the rights and interests of songwriters and composers under all circumstances, than in supporting one or the other candidate vying to be selected as the Mechanical Collective.'').

[157] 17 U.S.C. 115(d)(3)(D)(v), (d)(3)(J)(ii).

[158] *Id.* at 115(d)(3)(J)(iv)(II); *see also* S. Rep. No. 115–339, at 14 (''The 50% payment or credit . . . is intended to be treated as a floor, not a ceiling, and is not meant to override any applicable contractual arrangement providing for a higher payment or credit of such monies to a songwriter.'').

[159] 17 U.S.C. 115(d)(3)(J)(iii)(I).

[160] *Id.* at 115(d)(3)(J)(iii)(II).

[161] *Id.* at 115(d)(3)(D)(ix)(I)(aa).

[162] *Id.* at 115(d)(3)(D)(vii)(bb), (hh).

[163] *Id.* at 115(d)(3)(D)(ix)(II).

[164] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4; *see* 17 U.S.C. 115(d)(12).

[165] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4; *see* 17 U.S.C. 115(d)(12).

[166] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[167] 17 U.S.C. 115(d)(3)(B)(ii).

[168] H.R. Rep. No. 115–651, at 6; S. Rep. No. 115–339, at 5–6; Conf. Rep. at 4.

[169] SGA Reply at 9.

[170] 17 U.S.C. 115(d)(3)(A)(iii).

[171] Public Law 115–264, sec. 102(f), 132 Stat. at 3722–23.

[172] *Id.* at sec. 102(f)(2), 132 Stat. at 3723.

[173] 17 U.S.C. 115(d)(3)(J)(iii) (including maintenance of an online list of unmatched works through which ownership can be claimed, notification prior to any distribution, and participation in music industry conferences and events).

[174] *Id.* at 115(d)(5)(C)(i)(VII), (d)(5)(C)(iii).

educational activities that must specifically include ''educating songwriters and other interested parties'' about how ''a copyright owner may claim ownership of musical works (and shares of such works)'' and how ''royalties for works for which the owner is not identified or located shall be equitably distributed to known copyright owners.'' [175]

Finally, the Office suggests there may be other reasons for the statutory requirement that the MLC enjoy ''substantial support'' from the largest market share of musical work copyright owners. Without minimizing the importance of ensuring that unidentified copyright owners have the opportunity to come forward and effectively claim their works to receive accrued royalties, there are other duties of the MLC that also serve the paramount goal of ''ensuring that a songwriter actually gets paid.'' [176] As MLCI notes, already identified copyright owners have an interest in ensuring the efficient and accurate collection and distribution of royalties.[177] Further, the MLC will participate in proceedings before the CRJs, and having the support of publishers with prior experience before the CRJs may be beneficial. Establishment of the statutorily-required database will likely also benefit from initial support of music publishers and other relevant copyright owners with large quantities of authoritative versions of data for works that together will comprise the bulk of royalty distributions.[178] As these examples illustrate, having strong support from key copyright owners may assist in ensuring that the MLC is in the best possible position to succeed in effectively carrying out the whole of its assigned responsibilities.

ii. Evidentiary Findings

a. Market Share

With respect to the information submitted in the proceeding, AMLC does not provide market share data for its endorsing copyright owners. Nor do its endorsers provide sufficient information from which the Office can reasonably determine their aggregate applicable market share. In contrast, MLCI provides multiple data points regarding the market share of its endorsers.

For purposes of calculating market share, MLCI counts 132 musical work copyright owners it calls the ''Supporting Copyright Owners.'' [179] According to MLCI:

> The Supporting Copyright Owners include copyright owners of all sizes who own the relevant rights in musical works covering the spectrum of musical genres—including pop, rap, hip hop, R&B, country, rock, metal, reggae, folk, electronic, jazz, classical—and from every era—including popular current hits and ''evergreen standards.'' Their sizes range from major music publishers who own the relevant rights to millions of songs, to small, family-owned companies that focus on a particular genre or sub-genre. The Supporting Copyright Owners own the mechanical rights to, at a minimum, well over seven million musical works.[180]

A sworn declaration from David M. Israelite of the NMPA states that the Supporting Copyright Owners ''own[ ] the U.S. mechanical rights to millions of works'' and ''have confirmed that they exclusively endorse MLC[I] to be the collective, and have pledged to provide substantial support to MLC[I].'' [181] A group endorsement letter from the Supporting Copyright Owners further states that they ''all own, and have during the preceding three years owned, exclusive rights to license musical works for use in covered activities in the United States and have licensed those rights to digital music providers.'' [182] The Supporting Copyright Owners thus appear to be relevant copyright owners who may be counted for endorsement purposes. While MLCI states that it is also endorsed by ''over 2,400 songwriters''—of whom ''[o]ver 1,400'' ''have reported that they are self-published songwriters, meaning they are not signed to or affiliated with a music publisher and manage their own musical work copyrights''—they are not included in MLCI's market share calculations.[183]

According to MLCI, ''[i]ndustry data, including revenue information that NMPA collects from its members on an annual basis and publicly available data, demonstrates that the Supporting Copyright Owners represent between 85% and 90% of the licensor market for all uses of musical works during the [statutory three-year period from 2016 through 2018].'' [184] Additionally, Mr. Israelite's declaration provides data from *Billboard Magazine* showing the average combined market share of Supporting Copyright Owners appearing in *Billboard*'s quarterly top ten rankings of music publishers over the last three years to be 87.83%.[185]

Mr. Israelite states that these data figures are ''a fair proxy for estimating the Supporting Copyright Owners' market share for uses of musical works in covered activities, as there is no reason to believe that the Supporting Copyright Owners' market share for uses of their musical works in covered activities should deviate significantly from their market share for their uses of musical works generally.'' [186] In support, MLCI states that ''NMPA was able to confirm from information regarding the U.S. mechanical royalties paid by Apple Music and Spotify—the largest and most popular services in the market—that the Supporting Copyright Owners have together received the substantial majority of total mechanical royalties for uses of musical works in covered activities in the U.S. during the [statutory three-year period from 2016 through 2018].'' [187] As discussed below, Digital Licensee Coordinator, Inc. (''DLCI'') follows a similar market share-based approach to establish its endorsement by digital music providers and significant non-blanket licensees.[188]

AMLC does not contest these market share figures; indeed, a comment supporting AMLC submitted on behalf

[175] Public Law 115–264, sec. 102(e)(2), 132 Stat. at 3722.

[176] 164 Cong. Rec. S6292, 6292 (daily ed. Sept. 25, 2018) (statement of Sen. Hatch).

[177] MLCI Proposal at 107.

[178] For example, a number of MLCI's largest endorsers state that each intends to work with MLCI to incorporate its musical work data into the musical works database. *See, e.g.,* MLCI Proposal at Exs. 11–B–2 (Sony/ATV Music Publishing), 11–C–2 (Kobalt Music Publishing America, Inc.), 11–N–2 (Warner/Chappell Music, Inc.), 11–P–2 (Universal Music Publishing Group).

[179] *Id.* at 98.

[180] *Id.* (citations omitted); *see id.* at Ex. 11–8–9 (stating that ''a partial count of information obtained from less than half of the Supporting Copyright Owners shows that together they own (now and over the preceding 3 full calendar years) the right to reproduce and distribute over 7.3 million musical works in Section 115 covered activities in the U.S.'') (declaration of David M. Israelite).

[181] *Id.* at Ex. 11–5.

[182] *Id.* at Ex. 11–A–1; *see, e.g., id.* at Ex. 11–B–1 (''Sony owns the exclusive rights to license millions of musical works written by tens of thousands of songwriters, including for use in Section 115 covered activities. Sony has for well over the last three years licensed these rights to digital services through the Section 115 compulsory licensing process and, in some cases, through voluntary licenses.''); *id.* at Ex. 11–D–1 (''Reel Muzik Werks is the owner or the exclusive licensee of the rights to engage and to license others to engage in Section 115 covered activities . . . . Reel Muzik Werks has during the last three full calendar years licensed its rights in and to musical works to digital music providers for use in covered activities.'').

[183] *Id.* at 98–99 & n.22.

[184] *Id.* at 99 (citation omitted); *see also id.* at Ex. 11–5–7 (declaration of David M. Israelite).

[185] *Id.* at Ex. 11–6–7. The Office notes that *Billboard* appears to only ''measure the market share . . . of the top 100 radio airplay songs.'' *See, e.g.,* Ed Christman, *Music Publishers' 4th Quarter Report: Top 3 Companies Have the Same No. 1 Song,* Billboard (Feb. 3, 2017), *https://www.billboard.com/articles/business/7677913/music-publishers-4th-quarter-report.*

[186] MLCI Proposal at Ex. 11–7.

[187] *Id.* at 99–100; *see also id.* at Ex. 11–7–8 (describing methodology) (declaration of David M. Israelite).

[188] *See* DLCI Proposal at 4–7.

of a group of songwriters that includes two AMLC board members concedes that ''Sony/EMI, Warner, and Universal''—each of which exclusively endorse MLCI—''control about 65% of the market for music publishing.'' [189] The Office notes that other sources confirm that MLCI is supported by a majority of the music publishing market; according to *Music & Copyright*'s annual survey ''based on revenue,'' Sony,[190] Universal, and Warner/Chappell together had an average combined global market share of 58.65% for 2017 and 2018.[191]

Based on the foregoing, the Office finds that there is substantial evidence to demonstrate that MLCI is endorsed and supported by the required plurality of relevant endorsing copyright owners, based on applicable market share. Given the overwhelming majority market share of MLCI's Supporting Copyright Owners and the data from Apple Music and Spotify, and in the absence of any evidence to the contrary, the above-discussed market share figures appear more likely than not to be a sufficient proxy for estimating market share based on royalties earned from covered activities in the U.S. Even if that were not the case, the Office finds, based on the foregoing, that MLCI would still be ''the entity that most nearly fulfills'' the section 115(d)(3)(A)(ii) qualification.[192]

b. Number of Copyright Owners

In any event, even under the metric for which AMLC provides evidence—number of copyright owners—AMLC would not be the candidate that satisfies the endorsement provision.

The Office received comments from a significant portion of the music industry, voicing support for either MLCI or AMLC. Endorsements came from a diverse array of large and small publishers [193] as well as from thousands of songwriters from across the country and beyond representing virtually every major genre, including pop, hip hop, rap, rock, country, R&B, alternative, electronic, dance, folk, jazz, classical, Broadway/musical theatre, blues, Christian, gospel, Latin, bluegrass, and soul.[194] These songwriters include writers of #1 hit songs, Grammy Award winners and nominees, a Rock and Roll Hall of Fame inductee, members of the Nashville Songwriters Hall of Fame, film and television composers, and numerous less established or part-time writers.

The Office also heard from a broad assortment of trade groups and other organizations (some of which the Office understands to be members or subgroups of each other) representing publisher and songwriter interests. Groups listed as supporting AMLC include international alliances and collectives like the Music Creators of North America (''MCNA''), European Composer and Songwriter Alliance, Pan-African Composers' and Songwriters' Alliance, Asia-Pacific Music Creators Alliance, and Alianza Latinoamericana de Compositores y Autores de Música, and other groups like the Songwriters Guild of America, Screen Composers Guild of Canada, American Composers Forum, and Music Answers.[195] Groups listed as supporting MLCI include the National Music Publishers' Association, Association of Independent Music Publishers, International Confederation of Music Publishers, Nashville Songwriters Association International, Songwriters of North America, Music Publishers Association, American Composers Alliance, Gospel Music Association, Church Music Publishers Association, Americana Music Association, Copyright Alliance, and Creative Future.[196] In addition, performing rights organizations ASCAP, BMI, SESAC, and Global Music Rights all endorse MLCI, as do many representatives from the recorded music industry, including the Recording Industry Association of America, the American Association of Independent Music, the major record labels, and SoundExchange.[197] Lastly, in one of the few comments from an organization that waited to review the proposals before endorsing a candidate, the Recording Academy, whose membership includes ''thousands of working songwriters and composers, many of whom are independent, self-published, or unaffiliated songwriters,'' states that it ''believes that the MLC[I] submission is best equipped to satisfy the statutory requirements of the MMA.'' [198]

As noted above, and as both candidates agree, not every commenter can be counted for purposes of the endorsement provision—even under AMLC's interpretation. If the statue were to require only a headcount, it would still be a headcount of relevant copyright owners. In this proceeding, some endorsers, for example, are attorneys that give no indication that they are also relevant copyright owners.[199] Some endorsers do not give any indication of their connection to the industry.[200] And some endorsers who state that they are songwriters are not clear about whether they are also relevant copyright owners for their songs.[201] Many of the endorsements contain ambiguities such as these.

A separate issue concerns the treatment of the international alliances, performing rights organizations, trade groups, and other endorsing organizations. MLCI does not contend that these types of organizations are relevant copyright owners.[202] AMLC, on the other hand, appears to count not only each of its supporting organizations, but the individual members of each of those organizations.[203] MLCI strongly disapproves of this approach.[204] The Office finds it difficult to credit these purported endorsements, as there is insufficient evidence to demonstrate that every member of each of these

[189] Robert Allen Reply at 6.

[190] *See Global Recorded-music and Music Publishing Market Share Results for 2018,* Music & Copyright (May 8, 2019), *https://musicandcopyright.wordpress.com/2019/05/08/global-recorded-music-and-music-publishing-market-share-results-for-2018/.*

[191] *Id.* (this calculation includes figures from Sony/ATV, Sony Music Publishing Japan, and EMI Music Publishing and includes all revenue, not just for covered activities).

[192] 17 U.S.C. 115(d)(3)(B)(iii).

[193] *See, e.g.,* MLCI Proposal at 98, Ex. 11–A–X; KDE LLC Reply at 1 (supporting AMLC); Secretly Publishing Reply at 1 (supporting MLCI).

[194] *See, e.g.,* AMLC Proposal at 47–75; MLCI Proposal at Exs. 5–A, 6–10; Robert Allen Reply; Board of Directors of NSAI Reply; Maria Schneider Reply; Spence Burton Reply; Michael Busbee Reply; Britt Daley Reply; Barry DeVorzon Reply; Jerry Emanuel Reply; Beckie Foster Reply; Jan Garrett Reply; Ben Glover Reply; Dan Gutenkauf Reply; John Harding Reply; Aaron Johns Reply; Brett Jones Reply; Amy Kinast Reply; Wayne Kirkpatrick Reply; Sonia Kiva Reply; Bill LaBounty Reply; David Lauver Reply; Daniel Leathersich Reply; Alejandro Martinez Reply; Dennis Matkosky Reply; Steve Miller Reply; Clay Mills Reply; Vincent Mullin Reply; Kerry Muzzey Reply; Rick Nowels Reply; Melissa Peirce Reply, Jim Photoglo Reply; Deric Ruttan Reply; Jerry Schneyer Reply; Joie Scott Reply; Pamela Schuler Reply; Karen Sotomayor Reply; Miki Speer Reply; Even Stevens Reply; Paris Strachan Reply; Eleisa Trampler Reply; Kelly Triplett Reply; Danny Wells Reply; Anna Wilson Reply.

[195] AMLC Proposal at 47–48; *see generally id.* at 94–107.

[196] MLCI Proposal at 100, Ex. 11–X; International Confederation of Music Publishers Reply at 1.

[197] MLCI Proposal at 100, Ex. 11–X

[198] Recording Academy Reply at 1, 3.

[199] *See, e.g.,* Jay A. Rosenthal et al. Reply.

[200] *See, e.g.,* Jared Burton Reply; Brandon Dudley Reply; Earl Vickers Reply.

[201] *See, e.g.,* Ashley Gorley Reply; Chris Myers Reply; Jeff Rodman Reply; Chris Xefos Reply.

[202] *See* MLCI Proposal at 100, Ex. 11–9 (referring to them as ''non-musical work copyright owner[ ] groups'').

[203] *See* AMLC Proposal at 47–48 (claiming its endorsers ''represent hundreds of thousands of separate and unique music publishers whose music is distributed on digital streaming services in the United States'').

[204] *See* MLCI Reply at 11 (''MLC[I] would never claim that, simply by virtue of a trade group endorsement, each songwriter and publisher member of the trade group can be deemed to endorse and support MLC[I], as that would be misleading.'').

organizations actually endorses AMLC. While surely each referenced association on a general level represents the interests of their members, none of AMLC's group endorsements indicate that they have the authority to endorse an MLC candidate on their members' behalf. For example, the submissions do not indicate that any kind of resolution to endorse was passed by their members, and if one was, whether their members voted unanimously (as would be necessary to claim that every member should be counted). In many cases, moreover, it is difficult to tell whether the endorsements are submitted on behalf of the organization, or from individuals associated with the organizations acting in their personal capacities or in their capacity as an individual board member.[205] In fact, two organizations listed by AMLC as endorsers in its proposal subsequently disavowed the purported endorsements and clarified that they do not in fact support AMLC.[206]

If the Office were to credit these kinds of endorsements, it would raise unresolvable practical problems. For many of these organizations, no membership numbers are provided,[207] and for others, only an indefinite range or rounded figure is given, making a precise headcount impossible.[208] Additionally, without a list of member names, the Office cannot determine whether individual members are being counted more than once due to membership in multiple endorsing organizations or because the individual filed his or her own comment with the Copyright Office directly.[209] By not identifying purported endorsing members, the possibility also exists for conflicting endorsements.[210] For example, AMLC board members Zoe Keating, Maria Schneider, and Rick Carnes appear to be affiliated with ASCAP,[211] which endorses MLCI. These individuals presumably would object to MLCI counting them among its endorsers merely because ASCAP has endorsed MLCI.

Lastly, AMLC's proposal refers to ''100+ various individual composers/writers/publishers/organizations who have signed an AMLC endorsement document'' and ''600+ endorsements via [the] AMLC website,'' which suffer from the same kinds of practical problems.[212] Because these individuals are not specifically identified, the Office cannot determine their precise number or if any of them additionally submitted comments directly to the Office such that they may be counted more than once.

Nonetheless, even if these ambiguities are resolved in favor of counting each endorsement (except for the individual members of the endorsing organizations discussed above and the two organizations that repudiated their purported endorsements), AMLC still would have substantially fewer endorsements than MLCI.[213] Applying these assumptions, AMLC would have around 1,000 endorsements, while MLCI would have about three times that number. Even if based only on MLCI's Supporting Copyright Owners and the songwriters listed in MLCI's proposal who identified as self-published, MLCI would still have hundreds more endorsers than all of the comments submitted in support of AMLC. Thus, under both the proper metric of market share, and the alternative metric of number of copyright owners, MLCI is the candidate that satisfies the endorsement requirement.

As noted in conclusion below, the MMA was enacted only after an extensive effort to build consensus amongst musical work copyright owners and songwriters with various, sometimes competing, interests. The Register expects that the designated MLC will endeavor to equally represent the interests of those who did not endorse it, and that interested sides will continue to come together to make the implementation of this historic new licensing scheme a success, building upon the cooperative spirit that facilitated the MMA's passage.[214]

3. Administrative and Technological Capabilities

The statute requires that the designated entity ''has, or will have prior to the license availability date, the administrative and technological capabilities to perform the required functions of the mechanical licensing collective.'' [215] The NOI requested that each proposal include specific information to demonstrate the candidate's ability to meet this

[205] *See, e.g.,* AMLC Proposal at 95 (letter from the Chairman of the Asia-Pacific Music Creators Alliance, providing no information about the organization or its membership, and stating that ''*I* hereby voice *my* support to'' AMLC) (emphasis added); *id.* at 98 (same with respect to Alianza Latinoamericana de Compositores y Autores de Música); *id.* at 103 (same with respect to Pan-African Composers' and Songwriters' Alliance); *see also* AMLC *Ex Parte* Meeting Summary at 24 (''Some [organizational] endorsements were interpreted to be an endorsement by the individual, and others on behalf of the entire membership.'').

[206] *See* APRA AMCOS Reply at 1 (clarifying that APRA AMCOS does not endorse AMLC and was ''misrepresented in the AMLC's submission,'' and that the letter appended to AMLC's proposal was ''signed by a single writer director of the APRA board and does not represent the commitment or support of our organization, nor does the letter state anywhere that APRA itself has offered any such institutional endorsement''); *Statement from CISAC and CIAM on the U.S. Music Licensing Collective,* International Confederation of Societies of Authors and Composers (Apr. 5, 2019), *https://www.cisac.org/Newsroom/Articles/Statement-from-CISAC-and-CIAM-on-the-U.S.-Music-Licensing-Collective* (''For the avoidance of doubt and in view of the different rumours circulating, CIAM and CISAC wish to clarify that the organisations have not endorsed either of the competing companies for the U.S. MLC.'').

[207] *See, e.g.,* AMLC Proposal at 95 (Asia-Pacific Music Creators Alliance); *id.* at 98 (Alianza Latinoamericana de Compositores y Autores de Música); *id.* at 102 (Society of Authors and Composers of Colombia); *id.* at 104 (Screen Composers Guild of Canada); *id.* at 106 (ABRAMUS/ALCAM).

[208] *See, e.g., id.* at 99 (stating that European Composer and Songwriter Alliance ''represents over 50,000 professional composers and songwriters''); *id.* at 100 (stating that MCNA has an ''approximate collective membership of between 7,500 to 8,500 songwriters and composers''); *id.* at 105 (stating that Music Answers has ''more than 3,500 supporters''); SGA Reply at 1 (''membership ranges between 3,500 and 5,000 members'').

[209] For example, it seems that the memberships of SGA and Screen Composers Guild of Canada may be subsumed within the membership of MCNA. *See* AMLC Proposal at 100 (listing SGA and SCGC as ''member organizations'' of MCNA).

[210] While the Office made clear in the NOI that endorsements need not be exclusive, this is a different issue that speaks to whether the candidate is in fact supported by an individual.

[211] *See Sue (or In a Season of Crime),* ACE Repertory, *https://www.ascap.com/repertory#ace/search/workID/888244289* (last visited June 24, 2019) (listing Maria Schneider's PRO affiliation as ASCAP); *Across the Street (Live),* ACE Repertory, *https://www.ascap.com/repertory#ace/search/workID/886237406* (last visited June 24, 2019) (listing Zoe Keating's PRO affiliation as ASCAP); *Hangin Around,* ACE Repertory, *https://www.ascap.com/repertory#ace/search/workID/380230553* (last visited June 24, 2019) (listing Rick Carnes's PRO affiliation as ASCAP).

[212] AMLC Proposal at 48.

[213] The Office's methodology was as follows. First, the Office counted all endorsements provided by AMLC and MLCI in their respective proposals, including counting all proposed board and committee members. Then, the Office counted every endorsement contained in other comments. The Office did not, however, count the individual members of any endorsing groups or organizations for the reasons stated above. To be as equitable as possible, the Office treated every endorsement as coming from a relevant copyright owner, except where the record affirmatively stated otherwise. Because AMLC did not provide the identities of the bulk of their endorsers, the Office could not compare most of the endorsers from AMLC's proposal to the individual endorsements received in the comments, meaning the Office could not ascertain whether there might be duplicate endorsements. Because the Office could not deduplicate AMLC's endorsements, the Office did not deduplicate MLCI's endorsements either, so as to apply a consistent methodology to both candidates.

[214] *See, e.g. Music Policy Issues: A Perspective from Those Who Make It: Hearing on H.R. 4706, H.R. 3301, H.R. 831 and H.R. 1836 Before the H. Comm. on the Judiciary,* 115th Cong. 4 (2018) (statement of Ranking Member Nadler); 164 Cong. Rec. S501, 502 (daily ed. Jan. 24, 2018) (statement of Sen. Hatch); 164 Cong. Rec. H3522, 3536 (daily ed. Apr. 25, 2018) (statement of Rep. Goodlatte).

[215] 17 U.S.C. 115(d)(3)(A)(iii).

requirement, organized into enumerated categories.

i. Overview of Proposals, Including Business Planning and Budgeting

The Office requested that each entity provide ''a business plan, including a statement of purpose or principles, proposed schedule, and available budgetary projections, for the establishment and operation of the proposed MLC for the first five years of its existence.'' [216] The NOI noted that although the MLC designation process is separate from the establishment of an administrative assessment by the CRJs, ''understanding the proposed funding for the MLC (in advance of the establishment of the administrative assessment)'' and budgetary planning generally can be ''important to confirming that the MLC will be ready to adequately perform its required functions by the license availability date and beyond.'' [217] Accordingly, the Office's interest in the candidates' budgetary materials is ''for the purposes of this designation process only, and without prejudice to the future administrative assessment proceeding.'' [218]

Considering both proposals at a very high level, there are a number of similarities, including a shared intention to set up offices in or near Nashville, Tennessee.[219] Both candidates envision using a primary vendor to build out the required musical works database, and to varying degrees signaled intentions or openness to working with additional vendors.[220] In recognition that the creation of a comprehensive musical works database has long been an aim of various segments of the music community, both candidates plan to ''utilize systems that are tested'' [221] or ''leverage[ ] existing technology and data providers'' [222] Both propose to rely on automated processes for the bulk of identifying songs recorded and matching them to copyright holders, augmented with manual processing as needed.[223] To that end, both note the importance of compatibility with existing music industry standards, including communicating information in accordance with the Common Works Registration (''CWR'') format and DDEX standards, and a willingness to explore other relevant existing or emerging standards or open protocols.[224]

Similarly, AMLC and MLCI each express an understanding of the need to address policies and actions related to distributions of unclaimed accrued royalties with care, including providing adequate notice before such distributions occur.[225] They commit to engage in education and outreach efforts to publicize the collective, including procedures by which copyright owners may identify themselves to claim accrued royalties.[226] They both appropriately focus on the need to operate a user-friendly claiming portal, for, as the legislative history notes, ''the simple way to avoid any distribution to other copyright owners and artists is to step forward and identify oneself and one's works to the collective, an exceedingly low bar to claiming one's royalties.'' [227]

Although the proposals share certain commonalities, they diverge on details, sometimes significantly, including at times on the level or evidence of planning disclosed in response to the NOI. These differences were reflected in the proposed budgetary estimates, including the specific line items, put forth by each candidate.

a. MLCI

Out of the two candidates, MLCI provides a more detailed organizational model for its operations and reports that it ''has already begun the process of assuring the timely acquisition of these capabilities'' [228] necessary to fulfill the statutory functions. This framework is organized into three categories of activities: Strategic Processes, defined as ''the management processes that empower the operational capabilities of the collective''; Core Processes, defined as ''capabilities and processes in the core tasks'' including ''how the MLC performs the central ownership and license administration responsibilities''; and Foundational Processes, defined as ''necessary support capabilities and processes, usually typical of most businesses (payroll, legal, etc.).'' [229] These categories in turn comprise ten functions that the MLC will carry out on behalf of songwriters, musical works owners, and the public, explained by a series of detailed flow charts.[230]

While MLCI has not yet determined the precise management structure for daily operations or full staffing, it includes a series of organizational charts, which propose fifty-five employees.[231] It also has retained consultant support in overseeing technology strategy, the RFI/RFP process, and operations design, and reports that its board members have dedicated a considerable amount of time to this planning process.[232]

MLCI intends to ''utilize a single primary vendor for core usage processing functions, with consideration of secondary vendors to augment in specific areas.'' [233] Sixteen vendors participated in its RFI process, and MLCI selected seven of those to participate in the RFP process.[234] MLCI notes that, in aggregate, these RFI participants ''have processed nearly 20 trillion lines of sound recording usage and more than $4.2 billion in royalties for the U.S. territory over the past 3 calendar years, and have more than 20 million unique works in rights databases and existing connectivity with approximately 50,000 publishers.'' [235]

MLCI estimates its total startup costs through the license availability date to be between $26 and $48 million, with annual operating costs between $25 and $40 million.[236] To obtain funding, it has engaged in ''good faith negotiations with the major licensee services in an attempt to reach agreement on voluntary contributions.'' [237] If such an agreement is not realized, MLCI will participate in the assessment proceeding.[238] In that

[216] NOI at 65751 (requesting each plan also include ''a description of the intended technological and/or business methods'' for accomplishing the MLC's statutory obligations).

[217] *Id.* at 65752.

[218] *Id.*

[219] MLCI Proposal at 66; AMLC Proposal at 48, 76.

[220] MLCI *Ex Parte* Meeting Summary at 2; AMLC *Ex Parte* Meeting Summary at 7–9.

[221] MLCI Proposal at 39.

[222] AMLC Proposal at 5.

[223] MLCI Proposal at 18–19, 41; AMLC Proposal at 10–11.

[224] MLCI Proposal at 35, 38, 57–58; AMLC Proposal at 15; *see also* Berklee College of Music & MIT Connection Science Comments at 2–5.

[225] *See, e.g.,* MLCI Proposal at 43–44; AMLC Proposal at 18–19; AMLC *Ex Parte* Meeting Summary at 14.

[226] MLCI Proposal at 62–63; AMLC Proposal at 30–33.

[227] S. Rep. No. 115–339, at 14 (2018) (stating that ''[t]his process ensures that copyright owners and artists benefit'' in contrast to views of ''some copyright owners and/or artists who would prefer that such money be escrowed indefinitely until claimed'').

[228] MLCI Proposal at 7.

[229] *Id.* at 12.

[230] *Id.* at 13.

[231] *Id.* at 25; *see id.* at 25–29 (detailed description of employee roles).

[232] *Id.* at 3–4; *see also* MLCI *Ex Parte* Meeting Summary at 2.

[233] MLCI *Ex Parte* Meeting Summary at 2.

[234] MLCI Proposal at 55 (listing RFI participants ASCAP, AxisPoint, BackOffice, BMI, BMAT, Crunch Digital, DDEX, Gracenote, ICE, Music Reports, Inc. (''MRI''), Open Music Initiative (OMI), Sacem/IBM, SESAC/HFA, SOCAN/DataClef, SourceAudio, and SXWorks); *id.* at 59 (listing RFP participants ASCAP, BackOffice, ICE, MRI, SESAC/HFA, SXWorks, and Sacem/IBM); *id.*at Exs. 3, 4 (providing RFI and RFP). MLCI did not include copies of RFI or RFP responses, stating they are subject to nondisclosure agreements and include confidential information. *Id.* at 59.

[235] *Id.* at 56–57.

[236] *Id.* at 31–32.

[237] *Id.* at 59.

[238] *Id.* at 61.

event, it ''will seek bridge funding to cover any gaps,'' and expresses confidence that ''its extensive network of support and trust throughout the industry, and the reputations of its leadership, will assist it in obtaining support for its continued operations.'' [239] MLCI expects to have no need to apply unclaimed royalties to defray costs, though it notes that the statute permits it to do so on an interim basis.[240]

b. AMLC

AMLC aspires to adopt a leaner approach to these issues. Upon its launch, it will rely on incumbent services and vendors that have been ''vetted and approved'' by the Digital Media Association (''DiMA'').[241] It intends to add technology applications, features, and solution providers incrementally over time ''as a series of steps on top of [this] pre-existing solid foundation.'' [242] AMLC reports that it ''has taken significant input from key stakeholders, potential vendors, performing rights organizations, labels, and most importantly, publishers and songwriters in formulating [its] technology plan,'' and states that it will have further discussions in designing and implementing solutions if it is designated.[243] It intends to hire eleven employees, and ha engaged a technology consultant.[244] However, AMLC cautions that ''although there ha[ve] been significant discussions and planning . . . much of the details need to be formalized once the mandate decision is made.'' [245]

AMLC established several requirements that potential vendors must meet, including that the entity is ''in good standing''; has no pending litigation; has worked with or for the major music publishers, independent music publishers, and self-published songwriters; has worked with at least one of the major digital service providers (''DSPs''); and has distributed at least $100 million to rightsholders each year for the last two years.[246] Having held discussions with four primary vendors, AMLC ''expects to engage foundational vendors'' DataClef and MRI to enable it to provide a comprehensive interoperable database.[247] It notes that DataClef has access to the CIS–NET Works Information Database (''WID''), which includes over 81.1 million musical works.[248] Beyond these vendors, AMLC states that additional incumbent entities employed by DSPs have confirmed that if AMLC is designated, they would play a role if requested or needed.[249]

In response, MLCI expresses concern regarding the perceived lack of explanation of AMLC's RFI process, and doubts the ability of the potential AMLC vendors to provide key capabilities such as access to relevant databases, specifically challenging whether AMLC will be legally entitled to access the WID for its purposes.[250]

AMLC submitted substantially lower cost estimates for its activities, estimating total costs of approximately $43.9 million for its first five years, broken out across fewer categories than MLCI.[251] Like MLCI, AMLC intends to negotiate with DiMA on a final budget to be submitted to the CRJs for approval.[252] AMLC does not intend to utilize debt, except perhaps during the initial MLC startup phase.[253] AMLC believes it is inappropriate to apply songwriters' and publishers' royalties to cover the MLC's operating costs, but states that interest income earned from the unclaimed accrued royalties may be used to defer initial operating costs during the startup phase.[254]

MLCI characterizes AMLC's budget and development timeframe as vague and unrealistic.[255] Noting that AMLC's cost projections are far below the $30 million annual cost estimate provided by the Congressional Budget Office (''CBO''),[256] MLCI argues that AMLC's budget ''would result in a grossly underfunded collective that could not diligently protect the rights and royalties of songwriters and copyright owners.'' [257] Other commenters, some but not all affiliated with AMLC, praised AMLC's approach as reflecting the advantages of a startup or small company, or otherwise favored its proposed budget.[258]

Indeed, in some instances it is unclear whether AMLC's budget estimates anticipate each of its statutorily required activities in the manner it envisions executing them, which makes it difficult to assess AMLC's degree of advance planning. For instance, AMLC does not indicate which expenditures are encompassed by its ''OpEx'' budget item, which averages approximately $600,000 per year during its first two full years.[259] By comparison, MLCI's estimated operational costs include specific line items for premises, office expenses, accounting services, finance and insurance, and travel expenses, among other expenditures.[260] The comparative lack of specificity calls into question the extent to which AMLC considered the full range of the MLC's necessary operational costs. Similarly, AMLC projects annual expenditures of approximately $600,000 to $730,000 for licensing and legal activities for the first five years of its operation.[261] It is unclear whether these allocated amounts fully anticipate the MLC's statutory obligations in this area, which include participating in Copyright Office rulemakings and the CRJs' administrative assessment proceedings, and ''[e]ngag[ing] in legal and other efforts to enforce rights and obligations'' under section 115(d), ''including by filing bankruptcy proofs of claims for amounts owed under licenses'' or commencing actions for damages and injunctive relief in federal court.[262]

[239] *Id.*

[240] *Id.* at 61–62 (citing 17 U.S.C. 115(d)(7)(C)).

[241] AMLC Proposal at 4.

[242] *Id.*

[243] *Id.* at 6.

[244] *Id.* at 26.

[245] *Id.* at 6. AMLC subsequently reported that although several vendors have agreed to work with it in the event it is selected as the MLC, many ''were concerned [that] they would suffer negative consequences if they were listed in the AMLC application.'' AMLC *Ex Parte* Meeting Summary at 8. To the extent such vendors believe they are prohibited from contracting with both candidates, that understanding is not supported by the statute. As noted in the NOI, ''while the statutory language authorizes the MLC to arrange for services of outside vendors, nothing suggests that such a vendor must offer exclusive services to that MLC candidate.'' NOI at 65749. At the same time, the statute does not regulate parties' ability to enter into exclusive relationships or other arrangements that may affect the information that can be disclosed in the candidates' submissions.

[246] AMLC *Ex Parte* Meeting Summary at 7–8.

[247] AMLC Proposal at 4; *see also* AMLC *Ex Parte* Meeting Summary at 8–9 (indicating AMLC selected DataClef as their vendor, as well as a continued willingness to consider other vendors).

[248] AMLC Proposal at 7–8. It is unclear how DataClef qualifies as a vendor under AMLC's criteria, as it was launched in late 2018 and would not have distributed at least $100 million over the last two years. *See SOCAN Launches Dataclef Music Services* (Oct. 22, 2018), *https://www.socan.com/socan-launches-dataclef-music-services/.*

[249] AMLC Proposal at 4.

[250] MLCI Reply at 22–24 (''Access to the CIS–NET WID is a benefit for CISAC member societies, but a CISAC member like SOCAN would not have authority to sublicense the WID to anyone else it wants, be it DataClef or the collective.'').

[251] AMLC Proposal at 28.

[252] *Id.*

[253] *Id.* at 28–29 (outlining potential sources of debt financing).

[254] *Id.* at 29.

[255] MLCI Reply at 25–29.

[256] CBO, *Congressional Budget Office Cost Estimate, S. 2823 Music Modernization Act* (Sept. 12, 2018, revised Sept. 17, 2018), *https://www.cbo.gov/system/files/2018-09/s2823.pdf.*

[257] MLCI Reply at 25.

[258] *See* Peter Jessel Reply at 1; Peter Resnikoff Reply at 1; H. Hendricks Reply at 1; Alfons Karabuda Reply at 1; Betsy Tinney Reply at 1.

[259] *See* AMLC Proposal at 28.

[260] *See* MLCI Proposal at 32.

[261] AMLC Proposal at 28.

[262] 17 U.S.C. 115(d)(3)(C)(i)(VIII)–(XI); *id.* at 115(d)(6)(C)(i); *see also* AIPLA, 2017 Report of the Economic Survey 44 (2017).

ii. Ownership Information, Matching, and Claiming Process

As noted, a key aspect of the MLC's collection and distribution responsibilities includes ingesting data regarding musical works and uses under the license, and identifying musical works and copyright owners, matching them to sound recordings, and ensuring that a copyright owner gets paid as he or she should.[263]

Both proposals appropriately focus on this core task.[264] As noted, both AMLC and MLCI intend to employ established and standard data formats and architectural practices to support data exchange functions, including development of Application Programming Interfaces (''APIs'') to allow bulk processing of data for larger users [265] and supporting a variety of formats for new submissions ''to accommodate copyright owners who are unable to convert data to standard formats themselves.'' [266] Each expresses a willingness to utilize current and emerging technologies to match sound recordings to musical works, including hashes and watermarking or fingerprinting technologies.[267] Finally, both wisely point to usage reporting as the primary determinant with respect to prioritization of matching resources.[268]

In terms of populating ownership information, MLCI envisions updates to the database being built into industry deals involving assignment of copyright interests, and by establishing a simple, user-friendly, and ADA-compliant web portal.[269] According to MLCI, ''[o]nce the rights database, claiming portal, and license administration are fully operational, the industry will have a single, transparent, publicly-accessible resource for establishing and identifying ownership of mechanical rights.'' [270] MLCI ''would undertake targeted activities to clean and improve the initial ownership and matching data using independent data assets . . . drawing on MLC[I]'s unparalleled access to data resources from its industry supporters.'' [271] While noting that all usage data would be run through matching software, MLCI notes that it plans to develop policies to address issues related to calibration of confidence levels to ensure reliable matching, and prioritization of manual processing through the operations advisory committee in the context of specific unmatched pools.[272] MLCI asserts that for at least two years beyond the license availability date, and perhaps longer, any previously accrued unmatched uses will be analyzed by the MLC matching systems and will be publicly available on the rights portal for members of the public to claim.[273] MLCI adds that it intends to make repeated attempts to match ''until such time as the Unclaimed Royalties Committee and the Board of Directors . . . determine that a distribution of those unmatched royalties is fair and appropriate under the statute.'' [274]

MLCI contends that ''[t]here is no standard format for modeling musical works ownership agreement information in databases,'' as there is disagreement over which terms are important to capture, a problem paralleled in capturing chain of title data.[275] MLCI therefore presumes a necessity to merge ''information between databases,'' which ''can require complex reformatting of data.'' [276] In response, DiMA suggested that ''it may be more effective and efficient to focus efforts on increasing the accuracy of automated methods.'' [277] DiMA also suggests that improving the standardization of metadata might be achievable at lower cost by making such issues a focus of education and outreach efforts, as distinguished from the more labor- and cost-intensive approach of allowing data submission in a variety of different formats.[278] In its meeting with the Office, MLCI reiterated its intention to accept submission of data in multiple formats as a way to accommodate the needs and technical sophistication of a wide array of copyright owners. It also affirmed its commitment to education and outreach, noting that such efforts will inform the design of its rights portal and options for data submission.[279]

AMLC commits to continually engaging with stakeholders to monitor and review new frameworks, and has established an advisory technology committee comprised of members with significant technology backgrounds.[280] AMLC plans to ''build a robust interface to allow for bulk transitions of catalog or individual ownership changes . . . to be properly updated through the chosen authoritative data partners and vendors.'' [281] AMLC professes that its system will be designed in part for self-published songwriters, who represent the largest percentage of music owners but in many cases have the lowest level of understanding of copyright requirements.[282] AMLC anticipates that incomplete DSP data will be analyzed and segmented based on the distributor of the underlying recording, and repeatedly expresses optimism that the MLC and DSPs could work collaboratively to address such issues.[283]

Regarding the claiming process specifically, MLCI is confident that its ownership claiming portal will be usable by stakeholders of any sophistication level, and it will dedicate staff to assist copyright owners with troubleshooting and claims submission.[284] Likewise, AMLC intends to utilize DataClef's pre-built ''claiming portal,'' allowing copyright owners to search a database of unmatched and/or partial ownership recordings, and identify recordings of their compositions.[285] AMLC envisions implementing a change management module and reliance upon ''chosen authoritative data partners and vendors.'' [286] It proposes that its portal will stream 30-second preview clips to

[263] Indeed, many interested commenters focused on these ''core'' or ''principal'' duties. *See, e.g.,* Recording Academy Reply at 3; DiMA Reply at 2.

[264] *See* Recording Academy Reply at 3 (''Both have also demonstrated a clear commitment to the rights of songwriters.'').

[265] MLCI Proposal at 34–35, 37; AMLC Proposal at 5, 11, 15. Berklee College of Music and MIT Connection Science also noted the importance of the MLC using standardized APIs open protocols and accessibility. Berklee College of Music & MIT Connection Science at 2–5.

[266] MLCI Proposal at 37; *see* AMLC Proposal at 10 (similar, referencing need to ingest comma separated values (''CSV'') files, Excel files, DDEX files, or data via an online user interface with fields that the end user will populate).

[267] AMLC Proposal at 16; MLCI Proposal at 48.

[268] MLCI Proposal at 41 (stating ''[t]otal royalties accrued has been a common metric for prioritization, simply because it aims to minimize the total amount of unmatched royalties'' and that ''[u]sage and vintage of usage are metrics that are related to total royalties''); AMLC Proposal at 12.

[269] MLCI Proposal at 37 & n.6.

[270] *Id.* at 34.

[271] *Id.*

[272] *Id.* at 41; *see also* MLCI *Ex Parte* Meeting Summary at 3 (stressing ''the importance of robust manual efforts to match uses and locate owners of works'').

[273] MLCI Proposal at 43–44.

[274] *Id.* at 44. The Recording Academy urged the Register to seek further information on MLCI's commitments to match works and on when such commitments may reasonably be exhausted. *See* Recording Academy Reply at 4–5. In its *ex parte* meeting with the Office, MLCI reiterated its intention to ''exceed the statutory minimums related to notice and distribution in order to maximize matching success.'' MLCI *Ex Parte* Meeting Summary at 3.

[275] MLCI Proposal at 36.

[276] *Id.*

[277] DiMA Reply at 10.

[278] *Id.* at 10–11.

[279] MLCI *Ex Parte* Meeting Summary at 2–3.

[280] AMLC Proposal at 15–16, 36.

[281] *Id.* at 10.

[282] *Id.*

[283] *See, e.g., id.* at 4 (''our first priority is to meet with DiMA members and other DSPs to collaborate, white-board, diagram/discuss and further work through technology topics'').

[284] MLCI Proposal at 37 & n.6.

[285] AMLC Proposal at 9.

[286] *Id.* at 9–10.

allow rightsholders to confirm matches.[287]

In response to the Office's request for ''target goals or estimates for matching works in each of the first five years,'' [288] MLCI states that its target ''is, and will always be, 100% success.'' [289] But it argues that because match rates are easily manipulated, ''the critical question is not match rate, but the quality of matches.'' [290] Therefore, MLCI will ''fine-tune[ ]'' its algorithms based on system complaints, feedback, and disputes, and will investigate inaccurate matches.[291] MLCI also notes that it will explore developments in algorithms, machine learning, and artificial intelligence.[292]

For its part, AMLC believes that it can establish a dataset of 80 million works and recordings, ''with corresponding works that are matched with high confidence to recordings of approximately 70%, or 56 million works.'' [293] It estimates that the percentage of works matched will exceed 90% by 2024.[294] AMLC's estimates are based on several key assumptions, including 15% growth per year in works and recordings used in covered activities.[295]

Based on these submissions, the Copyright Office finds that both candidates have demonstrated a reasonable ability to acquire and build the necessary data processing capabilities for ownership identification, matching, and claiming processes. In particular, the Office appreciates the level of detail provided by both entities on their approach to matching works, description of plans to implement public claiming portals, and commitment to prioritizing usage, or total royalties accrued, when focusing on minimizing the incidence of unmatched sound recordings. The Office also appreciates that both candidates intend to adhere to established formats for data transfers, as well as use standard identifiers currently used by the global music industry. The Office expects the selected designee to follow through on these commitments, to continue to explore technological developments in matching works, and to publicly disclose and update the methods used in its matching efforts.

[287] *Id.* at 9.

[288] NOI at 65751.

[289] MLCI Proposal at 42.

[290] *Id.* at 43.

[291] MLCI Proposal at 43; *see also* MLCI *Ex Parte* Meeting Summary at 2–3.

[292] MLCI Proposal at 39.

[293] AMLC Proposal at 12.

[294] *Id.* at 12.

[295] *Id.* at 12–13.

iii. Dispute Resolution

As noted, the MLC dispute resolution committee will establish policies and procedures for copyright owners to address disputes relating to ownership interests in musical works. Neither candidate has developed detailed procedures governing this committee's activities, but both provided sufficient information regarding their understanding of the scope of its responsibilities.

MLCI will address disputed claims of ownership using existing tools commonly used in the industry, including algorithms used to detect fraud, establishing a process by which users can be authenticated, and tracking changes made by MLCI employees.[296] It notes that its dispute resolution committee and board have extensive experience in ownership matters, including the role of abandoned property laws, processes for validating copyrighted arrangements of public domain works, public domain fraud, and implementation of legal holds.[297]

Similarly, AMLC states that its conflict resolution committee will recommend and implement policies to address discrepancies, disputes, and fraudulent claims.[298] It reiterates that it will work with DSPs to identify the origin of false claims and create incentives for distributors to reduce fraud.[299] As noted above, it also envisions employing a robust data change management module.[300]

In *ex parte* meetings, both MLCI and AMLC confirmed their understanding that the dispute resolution committee's role does not include adjudicating ownership disputes on the merits. Rather, both expressed their understanding that the committee's function is limited to the establishment of policies and procedures to govern the resolution of such disputes.

iv. Maintenance of Musical Works Database

The Office requested input regarding the operation and maintenance of a well-functioning database, including specific information on how each entity would address issues of security, redundancy, privacy, and transparency.[301] Both depict a technological approach that is fully scalable and reliable, with the ability to handle large data sets.[302] They also each commit to establishing an information security management system that is certified with ISO/IEC 27001 and meets the EU General Data Protection Regulation requirements, and other applicable laws, and to employing redundancy practices to minimize data loss.[303]

While its policies and procedures for accessing information in the databases are not yet finalized, MLCI commits to following the regulations promulgated by the Register concerning ''the usability, interoperability, and usage restrictions of the musical works database.'' [304]

AMLC proposes two types of access to the musical works database. First, the general public would have access to ''a minimal amount of data that is generally available to the public already.'' [305] Second, AMLC will offer ''DSPs and other key constituents'' access to feeds with ''more comprehensive data that is generally not public, but necessary for proper royalty and ownership processing (such as splits, territorial rights etc.).'' [306] It proposes to develop data access rules ''in collaboration between publishers'' to ensure confidentiality and compliance with domestic and international privacy and data security policies.[307] AMLC's submission does not explicitly acknowledge the statutory requirements for provision of access, although elsewhere AMLC has pledged to conform any policies to subsequent regulatory activities.[308]

Based on this information, the Office finds that both MLCI and AMLC have the capability to maintain and provide access to the required public database of musical works. The Office appreciates each entity's commitment to ensure compliance with all relevant legal obligations with respect to privacy and security.

v. Notices of License, Collection and Distribution of Royalties, Including Unclaimed Accrued Royalties

The MLC's administrative role includes accepting notices of license (and terminating them when the licensee is in default), and collecting and distributing royalties for covered

[296] MLCI Proposal at 44–45.

[297] *Id.* at 45–46.

[298] AMLC Proposal at 14.

[299] *Id.*

[300] *Id.* at 10.

[301] NOI at 65751.

[302] AMLC Proposal at 16; MLCI Proposal at 49; *see also* DiMA Reply at 9–10 (addressing potential volume of transactions to be processed by the MLC).

[303] MLCI Proposal at 50; AMLC Proposal at 17.

[304] MLCI Proposal at 50 (quoting 17 U.S.C. 115(d)(3)(E)(vi)).

[305] AMLC Proposal at 17 (detailing fields with respect to musical works and sound recordings).

[306] *Id.*

[307] *Id.*

[308] *Id.* at 78 (AMLC bylaw art. 3).

activities, including unclaimed funds after the prescribed holding period.[309]

With respect to notices of license, MLCI reports that it ''will strictly enforce the monthly reporting requirements under Section 115(d)(4)(A), and will promptly issue notices of default and terminations of licenses where applicable.'' [310] It adds that it will distribute royalty pools obtained through legal proceedings to copyright holders based on usage reports and that where funds do not match the full amount of royalties due, they would be distributed on a *pro rata* basis.[311] AMLC notes that its board members have ''extensive experience in all matters of resolution of royalty collections and payments, including bankruptcy proceedings,'' and therefore it will be well positioned to adopt policies ''to manage all known situations'' related to licensee and licensor payments.[312]

With respect to distributions, MLCI intends to provide ''prompt, complete, and accurate payments to all copyright owners.'' [313] It interprets section 115(d)(3)(J)(i)(I)—which provides that the first distribution of unclaimed accrued royalties ''shall occur on or after January 1 of the second full calendar year to commence after the license availability date''—to provide that no such distribution shall occur prior to 2023.[314] Additionally, MLCI interprets the statute as providing discretion to retain unclaimed accrued royalties beyond the statutory holding period to allow for additional efforts at matching and claiming, and promises to do so where there is ''reasonable evidence'' that such efforts may bear fruit.[315] It is committed to diligent efforts to match uses and works, including ''robustly and relentlessly'' deploying its matching system with respect to unmatched works, and holding unclaimed accrued royalties beyond the statutory eligibility for distribution, to obtain more matches, and distribute more royalties to rightful owners.[316]

MLCI further states that its royalty payment systems will comply with relevant tax law obligations, ''including collection of valid documentation (*e.g.,* IRS Forms W–8 and W–9), administration of information statements and other reporting requirements (*e.g.,* IRS Forms 1099 and 1042), and, where applicable, the accurate withholding and depositing of U.S. tax payments.'' [317] It also notes that its board members have experience overseeing all aspects of royalty payment processing.[318]

AMLC does not specifically address timing of initial and annual distribution of unclaimed royalties, instead emphasizing that it intends to keep distribution of unclaimed royalties to the lowest possible limit, and to only make such distributions ''as a last resort after every possible effort is put into identifying the rights holder(s).'' [319] It further notes that its unclaimed royalties committee will seek to develop a policy ''to ensure the reserve fund is sized and managed appropriately.'' [320] In addition, AMLC plans to use actuarial data to make more accurate projections regarding accrued and unclaimed liquidations, interest earned, and potential claims.[321]

AMLC will outsource royalty payment to established payment vendors, ''or an entity that . . . has built the needed workflow/infrastructure into the existing work process that can be repurposed for AMLC distributions, such as . . . MRI and/or DataClef.'' [322] This entity ''will also be responsible for the storage of personal information (including tax ID, name, address, bank info etc.) under security compliant systems.'' [323]

In general, the Office is persuaded that both candidates, through vendors or a combination of vendors and in-house capabilities, are capable of carrying out functions relating to collection and distribution of royalties. As with some other requirements, however, MLCI's submission provides a more thorough explanation of how it would approach these matters. It articulates several policies it intends to implement to maximize matching, including holding accrued royalties beyond the statutory holding period, making information on unmatched works available on a public portal, and undertaking outreach and education efforts. Moreover, AMLC does not specifically address MLC functions regarding notices, recordkeeping, and collection under the license. For these reasons, MLCI has made a more persuasive showing with respect to these requirements.

With respect to the distribution of unclaimed, accrued royalties, the Copyright Office agrees with MLCI that the statute does not permit the first such distribution to occur before January 1, 2023.[324] The Office also agrees that unclaimed accrued royalties may be retained beyond the statutory holding period.[325]

vi. Education and Outreach

Both candidates appear to have developed multifaceted education and outreach plans to fulfill this statutory duty.[326] MLCI notes that it is already engaged in significant education and outreach efforts to inform the relevant industries and the general public.[327] It plans to continue these efforts through the MLC's launch, and thereafter will ''provide regular information and updates to the public,'' including through ''press releases, social media, articles and advertisements in trade publications, and speaking engagements at music industry events, conferences, and festivals.'' [328] MLCI notes that its board includes prominent music industry professionals who will use their expertise and connections to ensure that information is disseminated throughout the industry.[329]

AMLC has developed a strategy focused on three tasks: Engagement, education, and follow-up efforts.[330] It seeks to reach as many potential users as possible through a variety of channels, including advertising, social media, industry conferences, and sponsorships, and relying on its own board members' connections.[331] It specifically commits to making information available in ''English, Spanish, and additional languages on an

[309] 17 U.S.C. 115(d)(3)(C)(i)(I)–(II).

[310] MLCI Proposal at 51.

[311] *Id.* at 52.

[312] AMLC Proposal at 18.

[313] MLCI Proposal at 52.

[314] 17 U.S.C. 115(d)(3)(J)(i)(I); MLCI Proposal at 52.

[315] *Id.* at 52–53.

[316] *Id.* at 43–44, 53–54 (discussing ''mak[ing] information on its unmatched works available to the public on its rights portal'' and undertaking ''significant outreach to educate the public on accessing this information and making claims'').

[317] *Id.* at 51.

[318] *Id.*

[319] AMLC Proposal at 18–19.

[320] *Id.* at 19.

[321] *Id.*

[322] *Id.* at 18.

[323] *Id.*

[324] *See* 17 U.S.C. 115(d)(3)(J)(i)(I) (''The first such distribution shall occur on or after January 1 of the second full calendar year to commence after the license availability date, with not less than 1 such distribution to take place during each calendar year thereafter.'').

[325] *See id.* at 115(d)(3)(H)(i) (''The mechanical licensing collective shall hold accrued royalties associated with particular musical works (and shares of works) that remain unmatched for a period of *not less than* 3 years after the date on which the funds were received by the mechanical licensing collective, or *not less than* 3 years after the date on which the funds were accrued by a digital music provider that subsequently transferred such funds to the mechanical licensing collective pursuant to paragraph (10)(B), whichever period expires sooner.'') (emphasis added).

[326] *See generally,* MLCI Proposal at 62–63; AMLC Proposal at 30–33.

[327] MLCI Proposal at 62.

[328] *Id.* at 63.

[329] *Id.*

[330] AMLC Proposal at 30–33.

[331] *Id.* at 30.

as needed basis for targeted songwriting communities where the MLC determines special outreach is needed.'' [332] AMLC also plans to produce a series of tutorial videos on specific aspects of the royalty collection and distribution process.[333]

The Recording Academy asserts that ''[w]ithout an effective outreach program, the Collective will not succeed.'' [334] While noting that both proposals contain information regarding public outreach, the Recording Academy suggests that both are insufficiently detailed with respect to clear and executable plans, and how each will measure the effectiveness of outreach.[335] The Office questioned each candidate about specific plans and metrics in subsequent meetings. AMLC expressed a variety of ambitious outreach ideas, although it was not necessarily clear whether it had yet established a specific plan and timeline (or whether all intended activities were reflected in its budget planning).[336] MLCI represented that ''numerous educational and outreach documents have been drafted and release is pending the determination on designation.'' [337] It plans to utilize focus groups with respect to design of the rights portal, and leverage its board and committee members, as well as endorsers, in national and international outreach.[338]

Ultimately, the Office finds that both candidates have the capability to undertake the education and outreach efforts required of the MLC. Following this designation, the selected entity should work with the Office, the DLC, and other stakeholders to ensure that rightsholders are adequately informed about the new licensing framework and the MLC's functions. These efforts should include ''clear benchmarks that measure [the MLC's] outreach effectiveness so that it can modify and adapt its strategies and tactics to best serve the entire songwriter community.'' [339] In addition, as per Congress's directive, the Office will consider best practices in education and outreach efforts as part of its study on unclaimed royalties.[340]

vii. Copyright Office's Analysis

Overall, the submissions suggest that both MLCI and AMLC have or will have the basic administrative and technological capabilities to perform the required functions under the statute. For the reasons discussed above, however, MLCI has demonstrated a greater capacity to carry out several of these responsibilities. In particular, it is apparent that MLCI has established a more detailed operational framework and has garnered input from a broader set of interested parties. MLCI's submission reflects substantially more detailed planning with respect to organizational structure, vendor selection, and collection and distribution procedures.

Indeed, the Recording Academy, a rare organization to withhold endorsement until it was able to study each candidates' proposals, weighed in on the perceived capabilities of the two proposals, ultimately endorsing MLCI ''upon careful consideration of both submissions.'' [341] While praising the AMLC's commitment and role in ''opening up dialogue'' on issues with respect to transparency and board representation, the Academy noted that MLCI's ''submission embodies a thoughtful, meticulous, and comprehensive approach,'' concluding that it was ''best equipped to satisfy'' the duties of the MMA.[342]

For somewhat similar reasons, the Copyright Office concludes that MLCI is better equipped to operationalize the many statutory functions required by the MMA. To be sure, AMLC's goals and principles are laudable, and its submission includes a number of ideas that should be given further consideration. But while AMLC's leaner approach potentially could provide certain benefits, MLCI's planning and organizational detail provide a more reliable basis for concluding that it will be able to meet the MLC's administrative obligations by the license availability date.[343] The MLC is not a start-up venture or small business that can adjust its rollout timing or pivot its focus; rather, it is tasked with establishing, for the first time, a complex and highly regulated administrative framework designed to serve all who are subject to (or make use of) the statutory license, under legally-mandated timeframes.

MLCI's proposal as a whole reflects a more realistic understanding of the MLC's responsibilities under this new system and indicates that it is better positioned to undertake and execute the full range of administrative functions required of the MLC within these critical first five years.[344] The Office expects that MLCI will build upon its considerable planning in a flexible and conscientious manner that also considers input from the to-be-designated DLC non-voting or committee members, as well as the broader musical work copyright owner and songwriting communities.

B. Digital Licensee Coordinator

The Office received one proposal, by DLCI, for designation as the DLC.[345] DLCI's founding members are five of the largest digital music providers—Spotify USA Inc., Apple Inc., Amazon Digital Services LLC, Google LLC, and Pandora Media, LLC. DLCI's submission includes a proposal directly responding to the NOI, and a variety of supporting documents such as a certificate of incorporation, bylaws, and a five-year business plan.[346] For the reasons described below, the Register has concluded that DLCI meets each of the statutory criteria required of the digital licensee coordinator, and that each of its individual board members are well-qualified to perform the statutory functions. Accordingly, the Register designates DLCI and its members, with the Librarian's approval.

As noted above, in designating a DLC, the Register must apply similar statutory criteria regarding nonprofit status, endorsement (from digital music providers in this instance), and ability to perform the DLC's administrative capabilities. Unlike the MLC, the Register may decline to designate a DLC if she is unable to identify an entity that fulfills each of the statutory qualifications; in that event, the statutory references to the DLC go without effect unless or until a DLC is designated.[347] But designation of a DLC would allow that entity to start doing important work. The DLC's authorities and functions include enforcing notice and payment obligations with respect to the administrative assessment, publicizing the ability of copyright owners to claim unmatched musical

[332] *Id.*

[333] *Id.* at 32–33.

[334] Recording Academy Reply at 5.

[335] *Id.* at 5–6.

[336] *See* AMLC *Ex Parte* Meeting Summary at 17–20.

[337] MLCI *Ex Parte* Meeting Summary at 3.

[338] *Id.*

[339] Recording Academy Reply at 5.

[340] Public Law 115–264, sec. 102(f), 132 Stat. at 3722–23.

[341] Recording Academy Reply at 2–3. The Recording Academy noted that it represents ''thousands of working songwriters and composers, many of whom are independent, self-published, or unaffiliated songwriters.'' *Id.* at 1.

[342] *Id.* at 3.

[343] AMLC's failure to file a reply comment in this proceeding underscores this conclusion.

[344] Indeed, MLCI has pointed out that its budget is far more in line with the CBO estimate than is AMLC's. MLCI Reply at 25.

[345] DLCI Proposal at Ex. A–1–2 (certificate of incorporation).

[346] *See* DLCI Proposal.

[347] 17 U.S.C. 115(d)(5)(B)(iii).

work royalties through the MLC, appointing representatives of digital music providers to the MLC's operations advisory committee and generally representing digital music providers' interests as a non-voting member on the MLC board, and participating in proceedings before the CRJs and the Copyright Office.[348] As a result, it is important that the DLC is a well-qualified representative of both digital music providers who take advantage of the section 115 blanket license and significant nonblanket licensees who will benefit from the new MLC database.

1. Organization, Board Composition, and Governance

Beginning with the first required statutory qualification, DLCI's proposal sufficiently demonstrates that it is a nonprofit created to carry out responsibilities under the MMA. DLCI is a Delaware nonprofit ''organized to represent digital music providers in connection with the administration of the mechanical license provided under Section 115 of the United States Copyright Act.'' [349] DLCI thus satisfies the first statutory criterion that it be a single nonprofit entity created to carry out certain statutory responsibilities.[350]

DLCI's board is composed of the following initial members: Nick Williamson (Apple, Inc.), Lisa Selden (Spotify), Sarah Rosenbaum (Google), James Duffett-Smith (Amazon Music), and Cynthia Greer (Sirius XM Radio Inc., the parent of Pandora Media, LLC). Collectively and individually, these individuals have a significant and diverse background in the music licensing marketplace, including representing digital music providers and in music database administration, and thus qualify for appointment to the board.[351] DLCI has selected three officers: James Duffett-Smith as board chair, Sarah Rosenbaum as treasurer, and Lisa Selden as secretary, and anticipates hiring an executive director.[352] ''Subject to input from and discussion with the MLC,'' DLCI anticipates designating a non-director, officer, or employee to serve as the non-voting member of the MLC board; this potentially may be DiMA's CEO.[353]

In response to a request from the Office, DLCI named its representatives to the MLC's operations advisory committee.[354] Because MLCI and AMLC proposed different numbers of their own representatives to the operations advisory committee (six and four, respectively), DLCI stated that it will ''work with the [designated] MLC to finalize the appointees to the Committee following designation.'' [355] DLCI also anticipates creating several committees not required by the MMA. The Executive Committee will exercise the powers of the board, if and when the board exceeds nine members.[356] The Compliance Committee will be responsible for ''receiving and following up on reports from the MLC of non-compliant nonblanket licensees.'' [357] The Regulatory Committee will engage in both CRJ and Copyright Office proceedings.[358] And the Re-Designation Committee will prepare for a possible redesignation of DLCI as the DLC.[359]

DLCI's bylaws outline rules governing membership eligibility, voting, and dues; meetings and schedules; its board, committees, and officers; and other rules and operational provisions. DLCI creates three classes of membership (principal, charter, and general); until 2024, the principal members are DLCI's founding members.[360] Beginning in 2024, the principal members will be determined on a share basis by those charter members with the five highest stream counts, determined every two years.[361] Charter members are those who have adhered to the mission and standards of DLCI for at least two years and have paid relevant dues.[362] The bylaws also set out the voting structure, a meeting schedule, and a structure for collecting dues and funding the DLC.[363]

2. Endorsement

Under the second designation criterion, the DLC must be ''endorsed by and enjoy[ ] substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.'' [364] The Office asked for ''an explanation of how the proposed DLC has verified, calculated, and documented such endorsement and substantial support, including how the licensee market was calculated.'' [365] In response, DLCI indicated that it interprets the statutory term ''uses'' as referring to ''actual use of music pursuant to covered activities,'' and that such use could be measured in ''number of subscribers, number of streams, or amount of royalties paid.'' [366] DLCI stated that Congress could have chosen a different term if it wanted to measure endorsement by reference to, for example, a percentage of music providers engaged in covered activities or the number of musical works available.[367] DLCI did not disclose usage metrics for its member companies, stating that for ''any individual music service'' usage metrics are ''extremely confidential and proprietary.'' [368] Instead, DLCI offered aggregated metrics provided by the Harry Fox Agency (''HFA'') and MRI. This information indicated that DLCI members ''represented by [HFA and MRI] combined had over 84% of the aggregate streams, over 94% of the aggregate subscribers, and over 88% of the aggregate royalties paid'' over the last three years.[369]

The Copyright Office is tasked with evaluating the support of both digital music providers who will use the blanket license as well as significant nonblanket licensees.[370] But since it is currently before the license availability date, it is unclear which digital music providers will be taking advantage of

[348] *See generally, id.* at 115(d)(5)(C).

[349] DLCI Proposal at Ex. C–1; *id.* at Ex. A–1 (certificate of incorporation) (stating that ''[n]o part of the net earnings of [DLCI] shall inure to the benefit of, or be distributable to, its members, trustees, directors, officers or other private persons.'').

[350] 17 U.S.C. 115(d)(5)(A)(i).

[351] DLCI Proposal at Ex. C–14–17 (for example, Williamson previously headed the ''music industry technical standards body, DDEX''; Selden works to improve copyright matching at Spotify and, while at ASCAP, processed royalties ''for Amazon, Apple, Pandora and YouTube''; Rosenbaum has experience at both Google and Music Reports, where she launched a section 115 rights-claiming portal; and Duffett-Smith and Greer each have over fifteen years of experience licensing music for digital services).

[352] DLCI *Ex Parte* Meeting Summary at 1 (June 4, 2019); DLCI Proposal at Ex. B–18.

[353] DLCI Proposal at 8; *see id.* at Ex. B–16–18.

[354] Letter from DLCI to U.S. Copyright Office at 1 (June 13, 2019) (proposed committee members are Lisa Selden (Spotify), Nick Williamson (Apple Music), Alan Jennings (Amazon), Alex Winck (Pandora Media LLC), and Jennifer Rosen (Google Play Music and YouTube Music)); *see also* DLCI Proposal at Ex. C–12.

[355] Letter from DLCI to U.S. Copyright Office at 1.

[356] DLCI Proposal at Ex. B–13–14.

[357] *Id.* at Ex. C–7.

[358] *Id.* at Ex. C–11.

[359] *Id.* at Ex. C–12–13.

[360] *Id.* at Ex. B–2–3.

[361] *Id.* at Ex. B–3.

[362] *Id.* at Ex. B–2–3.

[363] Meetings will be as-needed and at least annual, with specified advance notice. *Id.* at Ex. B–7. All members have one vote, with some exceptions. *Id.* at Ex. B–4. DLCI's annual budget is dues-funded; at least 60% of is paid for by Charter Members and not more than 40% will be paid for by General Members. *Id.* at Ex. B–5. The board may also approve special assessments under certain circumstances. *Id.* at Ex. B–5–6.

[364] 17 U.S.C. 115(d)(5)(A)(ii).

[365] NOI at 65753.

[366] DLCI Proposal at 4–5.

[367] *Id.* at 4.

[368] *Id.* at 5.

[369] *Id.* at 5–6 (emphasis omitted).

[370] 17 U.S.C. 115(d)(5)(A)(ii).

the blanket license. DLCI does not describe whether its founding members would qualify as significant nonblanket licensees or blanket licensees but states that it is ''committed to soliciting other interested licensee services to participate in all aspects of the DLC'' and plans to ''bolster its support and endorsement'' going forward.[371]

In submitting the aggregated HFA and MCI metrics, DLCI offers three different criteria for evaluation (*i.e.,* subscribers, streams, or royalties paid). As the statutory language here is similar to the MLC endorsement/support criteria,[372] the Office believes that the DLC endorsement/support standard is intended to parallel the MLC standard. Thus, the entity designated as the DLC should be endorsed and supported by digital music providers and significant nonblanket licensees that together paid the largest aggregate percentage (among DLC candidates) of total royalties from the use of their musical works in covered activities in the United States during the statutory three-year period. In any event, DLCI is the sole candidate, and each criterion signals support over 80% of the relevant pool. DLCI thus satisfies the second statutory criterion for designation.

3. Administrative and Technical Capabilities

General. In response to questions regarding its administrative capabilities, DLCI submitted a five-year business plan, which includes plans for establishing and enforcing administrative assessment payment obligations, identifying unmatched musical work owners, including outreach, participating in MLC governance and CRJ proceedings, maintaining records of its activities, and an anticipated budget.[373]

DLCI's ''primary purpose will be to coordinate the activities of the digital music services relating to the mechanical license provided under Section 115, including through the specific authorities and functions identified in the statute.'' [374] It will ''fairly represent digital licensee services, and effectively coordinate with the MLC, to help realize the goals of the MMA to provide licensing efficiency and transparency, and to ensure that the new blanket licensing system is, and remains, workable for digital music providers as well as copyright owners.'' [375] DLCI describes its administrative capabilities as being ''managed by subject-matter experts with relevant industry experience and relationships'' to ''carry out its statutory functions and help ensure that the blanket licensing system is implemented successfully, to the benefit of all stakeholders in the industry.'' [376]

Membership. Although DLCI represents a large swath of the relevant licensee market, it does not represent all licensees, and presumably the market will see new entrants over the next five years.[377] Indeed, DLCI's membership is identical to DiMA's membership. DLCI has explained that it is committed to growing its membership to other DSPs and it is confident it will do so, noting that any digital music provider or significant nonblanket licensee can become a member of DLCI and smaller licensees will enjoy some protections, as the bylaws require certain actions to be passed by a supermajority of members.[378] DLCI's bylaws further outline how different membership tiers will be charged dues, and its business plan explains that operating expenses will be ''modest, and intend[ed] to minimize overhead costs to the extent possible.'' [379]

Administrative Assessment. DLCI asserts that it wishes to ''minimize the need for contested proceedings or enforcement actions, by prioritizing negotiations and cooperation among licensees and the MLC.'' [380] DLCI is developing an agreement regarding the apportionment of the administrative assessment among the digital music licensees and significant non-blanket licensees ''and expects to be able to establish a plan for that allocation before—or shortly after—the DLC is designated.'' [381] Should the administrative assessment be decided by the CRJs, DLCI suggests it is ''uniquely positioned to support the [Copyright Royalty Board] in its assessments of 'reasonable costs,' based on its members' experience with large-scale data management practices.'' [382]

While it does not endorse either candidate for the MLC, DLCI has been communicating with the two MLC candidates ''to support the development of efficient MLC operations and foster a collaborative working relationship'' regarding payment enforcement responsibilities.[383]

MLC Participation. DLCI hopes that its representatives ''will be able to help facilitate discussions between the MLC and DLC regarding the ongoing evaluation of the administrative assessment, and help streamline any potential [Copyright Royalty Board assessment] proceedings'' and apportionment.[384] While the administrative assessment proceeding will be conducted by the CRJs and its cost is beyond the ambit of the designation process, the Office notes that in some areas, DiMA—whose membership is coextensive with DLCI's founding and current members—appeared to envision a narrower range of activities, such as those related to manual claims processing and enforcement, than either of the MLC candidates.[385] Given the nascent status of operations, the Office would expect DLCI's participation on the MLC board to be flexible, as the Office expects from the MLC. In any event, DLCI suggested that coordination and communication may improve following conclusion of the designation process.

Confidentiality. To fulfill its statutory function of records maintenance, DLCI selected a secretary who will be responsible for ''ensuring that books, reports, statements, certificates, and all other documents and records are properly kept and filed'' [386] and for ''managing the confidentiality and security of sensitive information'' shared between it and the MLC.[387] With respect to confidentiality and the DLC representative on the MLC board, DLCI states that in addition to designating a

[371] DLCI Proposal at 6–7; *see also Oversight of the U.S. Copyright Office, Hearing Before the H. Comm. on the Judiciary,* 116th Cong. (2019) (statement of Rep. Escobar) (indicating that the DLC should not overlook smaller digital platforms and new market entrants).

[372] *Compare* 17 U.S.C. 115(d)(5)(A)(ii) (The DLC shall be ''a single entity that . . . is endorsed by and enjoys substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.''), *with id.* at 115(d)(3)(A)(ii) (The MLC shall be ''a single entity that . . . is endorsed by, and enjoys substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.'').

[373] *See* NOI at 65753; DLCI Proposal at Ex. C; *see also* 17 U.S.C. 115(d)(5)(C) (outlining authorities and functions of DLC regarding these topics).

[374] DLCI Proposal at Ex. C–1.

[375] *Id.* at Ex. C–2.

[376] *Id.* at Ex. C–13.

[377] For example, DLCI membership does not include TIDAL, Deezer, Soundcloud, iHeartRadio, or Napster.

[378] DLCI Proposal at Ex. C–13–14; DLCI *Ex Parte* Meeting Summary at 2.

[379] DLCI Proposal at Ex. C–18.

[380] *Id.* at Ex. C–3.

[381] *Id.* at Ex. C–4, C–5.

[382] *Id.* at Ex. C–6.

[383] *Id.* at Ex. C–3.

[384] *Id.* at Ex. C–9–10.

[385] *Compare* DiMA Reply Comments at 10, *and* DLCI *Ex Parte* Meeting Summary at 2, *with* MLCI Proposal at 36 (''Merging data from multiple sources on conflicts will require significant manual processing and will be very resource-intensive.'').

[386] DLCI Proposal at Ex. C–11; DLCI *Ex Parte* Meeting Summary at 1.

[387] DLCI Proposal at Ex. C–12.

non-DLCI director, officer, or employee, it plans on ''establishing, through agreement, appropriate limitations on the information that may be shared between [the MLC and DLC], as well as procedures for shielding information concerning individual licensee service members of the DLC from other licensee service members.'' [388] If necessary, DLCI states that it could address any confidentiality or administration issues with the MLC's vendors in specific agreements.[389] The Copyright Office is hopeful that relevant parties will agree on appropriate procedures to protect confidential, proprietary, or otherwise sensitive information, and notes that the Register has ultimate responsibility to proscribe regulations related to the protection of confidential information by the MLC, DLC, and their employees, committees, or board members.[390]

Education and Outreach. DLCI expects to ''develop standardized text identifying and providing contact information for the MLC, and instructions for how a songwriter or other copyright owner of musical compositions can claim accrued royalties by providing the necessary information to the MLC'' for digital licensees to post on their services.[391] DLCI generally expressed intentions to engage in educational efforts and plans to coordinate outreach efforts with the MLC to inform songwriters and publishers of the MLC and how to claim royalties, including by ''develop[ing] a protocol to guide its members' individual outreach'' and ''participat[ing] in songwriter and publisher industry events, including those organized by the MLC.'' [392] DLCI has also committed to participating in outreach events with the Copyright Office.[393]

The Office finds that DLCI has addressed the main issues regarding its administrative capabilities. DLCI proposed a thorough and thoughtful governance structure, criteria for membership, and dues structure, and appears well-positioned to participate in an administrative assessment proceeding if necessary. Other DLCI functions, such as educational and outreach efforts, plans to enforce notice and payment obligations, and ensuring that DLCI has the broadest possible support of the licensee market, appear more inchoate and may benefit from continued refinement. Overall, the Office concludes that DLCI satisfies the third statutory criterion for designation as the DLC and has demonstrated a commitment to building out its operations and execution of its statutory functions.

C. Conclusion

For the reasons set forth above, the Register is selecting and designating MLCI and DLCI, and their individual board members, which Librarian approves. MLCI has demonstrated it meets each of the statutory criteria; indeed, it is the only candidate that satisfies the requirement of being endorsed by, and enjoying substantial support from, musical work copyright owners that represent the greatest percentage of the licensor market for covered activities in the past three years. Further, by articulating a more thoughtful, methodical, and comprehensive approach towards executing the many important administrative and technological duties of the collective, MLCI has also demonstrated that it is better positioned to perform the required functions. The Register has reviewed and determined that each of MLCI's individual board members are well-qualified to serve on the board in accordance with the statutory criteria. Similarly, DLCI has demonstrated that it fulfills each of the statutory criteria for designation, and that its individual board members are well-qualified to serve on its board pursuant to the statute.

Importantly, both the MLCI and the DLCI submissions acknowledge that their intended roles carry the responsibility to broadly represent the interests of musical work copyright owners and songwriters, or digital music providers, respectively, with respect to the section 115 mechanical license. In particular, the Office appreciates AMLC's proposal. The Office hopes that MLCI will consider whether any aspects of the AMLC's proposal should be incorporated into its future planning.

As the legislative history amply documents, this historic music copyright legislation was enacted only in the wake of significant consensus-building and cooperation across a wide berth of industry stakeholders.[394] Now that it is time to roll up sleeves, sustained dedication to these worthy goals will be critical as the MLC and DLC turn to the many tasks involved in preparation for the license availability date.

The Copyright Office looks forward to working with the MLC, DLC, and other interested parties on next steps in MMA implementation. As noted, the MLC and DLC, along with the Copyright Office, are asked to facilitate education and outreach regarding the new blanket licensing system to the broader songwriting community. In the coming months, the Office will initiate additional regulatory activities required under the statute and begin planning its public policy study regarding best practices, which the MLC may implement to identify musical work copyright owners with unclaimed accrued royalties and reduce the incidence of unclaimed royalties. Future information regarding those activities will be made available at: *https://www.copyright.gov/music-modernization/*.

Finally, the Copyright Office finds that there is good cause to make the codification of this designation effective on publication. Timely designation of the MLC and DLC are vital to the success of Congress's reform of the section 115 statutory license. Indeed, by the statutory language, the designation would be timely based solely upon the date of publication in the **Federal Register**, but reflecting the designation in Copyright Office regulations will be helpful to the public.[395] The statutory designation deadline is the same deadline for the CRJs to commence a

[388] NOI at 65753; DLCI Proposal at 8; *see also id.* at Ex. C–9.

[389] DLCI Proposal at 10.

[390] 17 U.S.C. 115(d)(12)(C).

[391] DLCI Proposal at Ex. C–8.

[392] *Id.*

[393] DLCI *Ex Parte* Meeting Summary at 2.

[394] *See, e.g., Music Policy Issues: A Perspective from Those Who Make It: Hearing on H.R. 4706, H.R. 3301, H.R. 831 and H.R. 1836 Before H. Comm. On the Judiciary*, 115th Cong. 4 (2018) (statement of Rep. Nadler) (''For the last few years, I have been imploring the music community to come together in support of a common policy agenda, so it was music to my ears to see—to hear, I suppose—the unified statement of support for a package of reforms issued by key music industry leaders earlier this month. Many of these measures, such as the CLASSICS Act and the Music Modernization Act, are supported by stakeholders on both sides, by digital service providers as well as by music creators. This emerging consensus gives us hope that this committee can start to move beyond the review stage toward legislative action.''); 164 Cong. Rec. H3522, 3537 (daily ed. Apr. 25, 2018) (statement of Rep. Collins) (''[This bill] comes to the floor with an industry that many times couldn't even decide that they wanted to talk to each other about things in their industry, but who came together with overwhelming support and said this is where we need to be.''); 164 Cong. Rec. S501, 502 (daily ed. Jan. 24, 2018) (statement of Sen. Hatch) (''I don't think I have ever seen a music bill that has had such broad support across the industry. All sides have a stake in this, and they have come together in support of a commonsense, consensus bill that addresses challenges throughout the music industry.''); 164 Cong. Rec. H3522, 3536 (daily ed. Apr. 25, 2018) (statement of Rep. Goodlatte) (''I tasked the industry to come together with a unified reform bill and, to their credit, they delivered, albeit with an occasional bump along the way.''); 164 Cong. Rec. S6259, 6260 (daily ed. Sept. 18, 2018) (statement of Sen. Alexander on behalf of Sen. Grassley) (''This bill is the product of long and hard negotiations and compromise.'').

[395] 17 U.S.C. 115(d)(3)(B)(i), (d)(5)(B)(i).

proceeding to establish the initial administrative assessment, which anticipates MLC and DLC participation.[396] Further, given the license availability date of January 1, 2021, the MLC has a tight deadline to become fully operational, and both the MLC and DLC have important roles in educating the public on the royalty claiming process, which may be unnecessarily encumbered if designation were delayed.[397] The public had ample opportunity to comment on the proposals for parties to be named the MLC and DLC and did, in fact, file over six hundred comments in response to the different proposals.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

■ 2. Add subpart A, consisting of §§ 210.1 through 210.10, to read as follows:

Subpart A—Blanket Compulsory License, Mechanical Licensing Collective, and Digital Licensee Coordinator

Sec.

§ 210.1 Designation of the Mechanical Licensing Collective and Digital Licensee Coordinator.

The following entities are designated pursuant to 17 U.S.C. 115(d)(3)(B) and (d)(5)(B). Additional information regarding these entities will be made available on the Copyright Office's website.

(a) Mechanical Licensing Collective, Inc., incorporated in Delaware on March 5, 2019, is designated as the Mechanical Licensing Collective; and

(b) Digital Licensee Coordinator, Inc., incorporated in Delaware on March 20, 2019, is designated as the Digital Licensee Coordinator.

[396] *Id.* at 115(d)(3)(B)(i), (d)(5)(B)(i), (d)(7)(D)(iii)(I).

[397] *See id.* at 115(d)(3)(J)(iii), (d)(5)(C)(iii).

§§ 210.2–210.10 [Reserved]

Dated: July 1, 2019.

Karyn A. Temple,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2019–14376 Filed 7–5–19; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Parts 303, 350, 355, 370, 380, 382, 383, 384, and 385

[Docket No. 18–CRB–0012 RM]

Copyright Royalty Board Regulations Regarding Procedures for Determination and Allocation of Assessment To Fund Mechanical Licensing Collective and Other Amendments Required by the Hatch-Goodlatte Music Modernization Act

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges (Judges) adopt regulations governing proceedings to determine the reasonableness of, and allocate responsibility to fund, the operating budget of the Mechanical Licensing Collective authorized by the Music Modernization Act (MMA). The Judges also adopt proposed amendments to extant rules as required by the MMA.

DATES: Effective July 8, 2019.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: On March 13, 2019, the Copyright Royalty Judges (Judges) published proposed regulations governing proceedings to determine the reasonableness of, and allocate responsibility to fund, the operating budget of the Mechanical Licensing Collective authorized by the Music Modernization Act (MMA). The Judges also proposed amendments to extant rules as required by the MMA. 84 FR 9053. The Judges received comments from the Digital Music Association (DiMA), The National Music Publishers Association (NMPA), and SoundExchange, Inc.[1] The commenters generally support the Judges' proposal while recommending certain adjustments, many of which the Judges accept as improvements to the rules as originally proposed. The Judges hereby adopt the proposed rules as amended.

Background

The MMA amended title 17 of the United States Code (Copyright Act) to authorize, among other things, designation by the Register of Copyrights (with the approval of the Librarian of Congress) of a Mechanical Licensing Collective (MLC). 17 U.S.C. 115(d)(3)(A)(iv) and 17 U.S.C. 115(d)(3)(B)(i). The MLC is to be a nonprofit entity created by copyright owners to carry out responsibilities set forth in sec. 115 of the Copyright Act. 17 U.S.C. 115(d)(3)(A)(i). The Copyright Act sets forth the governance of the MLC, which shall include representatives of songwriters and music publishers (with nonvoting members representing licensees of musical works and trade associations). 17 U.S.C. 115(d)(3)(D). The MLC is authorized expressly to carry out several functions under the Copyright Act, including offering and administering blanket licenses and collecting and distributing royalties. 17 U.S.C. 115(d)(3)(C)(i) and (iii).

Section 115(d)(5)(A) of the MMA defines a second entity, the Digital Licensee Coordinator (''DLC''), a single nonprofit entity not owned by any other entity, created to carry out responsibilities under the MMA. The DLC must be endorsed by and enjoy substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding three calendar years. 17 U.S.C. 115(d)(5)(A). The DLC will be designated by the Register, with the approval of the Librarian, and is authorized to perform certain functions under the Copyright Act, including establishing a governance structure, criteria for membership, and dues to be paid by its members.[2] The DLC is also authorized to engage in efforts to enforce notice and payment obligations with respect to the administrative assessment, including by receiving information from and coordinating with the MLC. The DLC is also authorized to initiate and participate in proceedings before the Judges to establish the

[1] The proposal was further to a Notice of Inquiry that the Judges published on November 5, 2018. 83 FR 55334.

[2] The Register may decline to designate a DLC if she is unable to identify an entity that fulfills the qualifications for the DLC set forth in the MMA. 17 U.S.C. 115(d)(5)(B)(iii).

administrative assessment. 17 U.S.C. 115(d)(5)(B)–(C).

The MMA provides that the Judges must, within 270 days of the effective date of the MMA, commence a proceeding to determine an initial administrative assessment that digital music providers and any significant nonblanket licensees shall pay to fund the operations of the MLC. 17 U.S.C. 115(d)(7)(D)(iii)(I).[3] The Judges may also conduct periodic proceedings to adjust the administrative assessment. 17 U.S.C. 115(d)(7)(D)(iv). In the proceedings to determine the initial and adjusted administrative assessments, the Judges must determine an assessment ''in an amount that is calculated to defray the reasonable collective total costs.'' 17 U.S.C. 115(d)(7)(D)(ii)(II).

Creation of the MLC and the other statutory changes in the MMA require or authorize modification of the Judges' regulations relating to sec. 115. For example, sec. 102(d) of the MMA requires the Judges, not later than 270 days after enactment of the MMA, to amend 37 CFR part 385, ''to conform the definitions used in such part to the definitions of the same terms described in sec. 115(e) of title 17, United States Code, as added by'' sec. 102(a) of the MMA. That provision also directs the Judges to ''make adjustments to the language of the regulations as necessary to achieve the same purpose and effect as the original regulations with respect to the rates and terms previously adopted by the [Judges].''

In that regard, the MMA also adds a new sec. 801(b)(8) to the Copyright Act, which authorizes the Judges ''to determine the administrative assessment to be paid by digital music providers under section 115(d)'' and states that ''[t]he provisions of section 115(d) shall apply to the conduct of proceedings by the [Judges] under section 115(d) and not the procedures in this section, or section 803, 804, or 805.'' 17 U.S.C. 801(b)(8). To discharge this duty, the MMA authorizes the Judges to adopt regulations concerning proceedings to set the administrative assessment established by the statute to fund the MLC. 17 U.S.C. 115(d)(7)(D)(viii) and 115(d)(12)(A).

A. Discussion of Comments

As noted above, the three sets of comments the Judges received were generally supportive of the Judges' proposal, much of which responded to comments that the Judges had received in response to their Notice of Inquiry (NOI). Some comments, however, raised issues with particular aspects of the proposal, which the Judges address below. The comments of DiMA and NMPA overlapped on many issues. Therefore, the Judges discuss the respective comments of these two commenters in a single section. SoundExchange's comments are addressed in a separate section.

1. DiMA and NMPA Comments

According to DiMA, Congressional intent in adopting the MMA is that the MLC and the DLC are to be created, designated, and approved to serve as proxies for the interests of their respective constituencies, with the MLC serving as the voice of musical work copyright owners/licensors and the DLC serving as the voice of digital music licensees. DiMA Comment at 3. DiMA believes, however, that as currently drafted, certain of the proposed rules put the DLC in an inferior position as compared to the MLC, creating inequities that ultimately may undermine the perceived goal of the assessment proceedings to establish the amount and terms of the administrative assessment based on a comprehensive, transparent record or to allow for the negotiation of a voluntary agreement among the MLC and DLC, which DiMA asserts, represent the vast majority of their respective stakeholders. *Id.* at 4. DiMA points out perceived disparities between the MLC and the DLC in three areas, discussed below.

(a) DiMA Believes the MLC and the DLC Should Be Provided With Equal Opportunities To Take Depositions

DiMA notes that proposed § 355.3(e) would authorize the MLC to notice and take up to five depositions during its discovery period and would authorize the DLC, together with ''interested copyright owners, interested Digital Music Providers, and interested Significant Nonblanket Licensees,'' to notice and take up to five depositions ''collectively'' during their discovery period.

According to DiMA, the proposed rules thus permit the MLC to review whatever discovery it deems relevant, determine the five individuals it believes would be most advantageous to depose and the order in which it wishes to depose these individuals, and set the timing of those depositions within the discovery period, unencumbered by the other parties. DiMA Comment at 4.

In contrast, DiMA notes, the DLC would be required to share its five depositions with the other proceeding participants. As a result, DiMA believes that the proposed rules would constrain the DLC in its efforts to take depositions, requiring that it negotiate and compromise on the deposition process with other participants, making the development of a coherent and efficient strategy for this process incredibly difficult.

DiMA asserts that under the proposed rules, any proceeding participant other than the MLC could essentially ''hijack'' the first discovery period deposition process by noticing all five depositions on the very first day of that discovery period, thereby blocking the DLC's ability to take depositions of potentially far more relevant individuals. DiMA believes that the perceived open-ended nature of the deposition process in the proposed rules would create disputes that the CRJs would be required to resolve over areas such as the individuals who would be deposed, the time allocations for examination of those witnesses, and the timing of the depositions, resulting in significant inefficiencies within the discovery timeline. DiMA Comment at 5.

DiMA believes that the DLC should be provided with access to the deposition process equal to that of the MLC, and the proposed rules should be amended to permit the DLC to take up to five depositions under the same conditions as those provided to the MLC.

DiMA acknowledges the need to ensure that the discovery process is also fair to other proceeding participants. To that end, DiMA recommends that the proposed rules be modified to mandate a duty requiring these other parties to cooperate with DiMA and each other in good faith in discovery and to attempt to resolve disputes amongst themselves before availing themselves of the discovery disputes process outlined in proposed § 355.3(h). DiMA also suggests that the Judges modify the proposed rules to make clear that proceeding participants whose interests may not be fully represented by either the MLC or the DLC are permitted to take advantage of the discovery disputes process set forth in proposed § 355.3(h), to request authorization from the CRJs to take any depositions they deem necessary and, upon a showing of good cause, be permitted to take those depositions. DiMA Comment at 6.

DiMA believes that the deposition process outlined above would place the DLC on equal footing with the MLC, while at the same time providing meaningful opportunities to other proceeding participants to partake in the deposition process as well. *Id.*

The Judges believe that DiMA's proposed modifications to § 355.3(e) and (h) are reasonable and appropriate

[3] The assessment may also be paid through voluntary contributions from digital music providers and significant nonblanket licensees as may be agreed with copyright owners. 17 U.S.C. 115(d)(7)(A)(ii).

and therefore adopt DiMA's recommended modifications.[4]

(b) DiMA Believes That the First and Second Discovery Periods Should Be Substantively Identical

In the Joint Proposal that DiMA and the NMPA submitted in response to the Judges' Notice of Inquiry, NMPA/DiMA recommended that administrative assessment proceedings have two discovery periods. According to DiMA, the first discovery period would be reserved for the DLC and other participants in the proceeding, other than the MLC, to allow those parties to examine the MLC's submission and probe its constituent parts in preparation for the DLC's and other participants' responsive submissions. The second discovery period would be reserved for the MLC to allow it to examine the responsive submissions and to probe their constituent parts in preparation for the MLC's reply submission, which, under the Joint Proposal, the MLC would have the option to file after the second discovery period. DiMA Comment at 7.

DiMA contends that the proposed rules contain several ambiguities and inconsistencies that require clarification to ensure that discovery during administrative assessment proceedings is efficient, logical, and equitable. *Id.* For example, DiMA notes that § 355.2(g)(1)(iii) of the proposed rules reserves the first discovery period ''for the [DLC] and any other participant in the proceeding, *other than the [MLC],* to serve discovery requests and complete discovery pursuant to § 355.3(d).'' DiMA further notes that § 355.3(d) states that ''the [DLC], *interested copyright owners, interested Digital Music Providers, and interested Significant Nonblanket Licensees . . . and any other participant in the proceeding* may serve requests for additional documents'' (emphasis added by DiMA).

According to DiMA, the italicized language in § 355.3(d) is problematic in that there are no statutorily authorized ''other participant[s] in the proceeding'' other than the DLC, interested copyright owners, interested Digital Music Providers, and interested Significant Nonblanket Licensees, all of which are already enumerated within the same sentence, making this language redundant at best and potentially opening the door to discovery by the MLC during the first discovery period at worst, which, DiMA contends, is directly contrary to the language of proposed § 355.2(g)(1)(iii). DiMA Comment at 8. DiMA therefore recommends that the Judges clarify § 355.3(d) to remove the ''interested copyright owners, interested Digital Music Providers, and interested Significant Nonblanket Licensees'' language and instead conform this language with the language from § 355.2(g)(1)(iii) (*i.e.,* ''the Digital Licensee Coordinator and any other participant in the proceeding, other than the Mechanical Licensing Collective'') to resolve this internal inconsistency and potential ambiguity. For the same reasons, DiMA also suggests that identical language in § 355.3(f)(1) likewise be modified accordingly. DiMA Comment at 8. The Judges believe DiMA's proposed modifications are reasonable and appropriate and therefore adopt them.

DiMA further notes that as presently drafted, proposed §§ 355.2(g)(1)(iii) and 355.3(d) fail to set forth the right of the DLC and other proceeding participants to take depositions during the first discovery period, which, DiMA contends, appears to be an inadvertent oversight, since those depositions are clearly contemplated by, and discussed in, § 355.3(e). DiMA recommends that § 355.3(d) be amended to add a subsection (2) that substantively mirrors § 355.3(g)(2) (but with the reference to ''note'' corrected to ''notice''), which addresses the MLC's ability to take depositions during the second discovery period (*i.e.,* ''The [DLC] (or if no [DLC] has been designated, interested Digital Music Providers and Significant Nonblanket Licensees representing more than half of the market for uses of musical works in Covered Activities, acting collectively) and any other participant in the proceeding, other than the [MLC], may notice and take depositions as provided in paragraph (e) of this section.''). DiMA Comment at 8.

DiMA also asserts that § 355.3(e) requires the correction of what appears to be a typographical error. According to DiMA, the first sentence of that section authorizes the noticing and taking of depositions during the first discovery period by the DLC and other proceeding participants. The second sentence then authorizes the noticing and taking of depositions by the MLC but inadvertently states that these depositions are to be taken during the ''first'' rather than the ''second'' discovery period. Yet § 355.2(g)(1)(v) discusses the second discovery period in the proceeding, which provides for the MLC ''to serve discovery requests and complete discovery of the [DLC] and any other participant in the proceeding pursuant to § 355.3(g).'' Section 355.3(g), in turn, is titled ''*Second discovery period*.'' According to DiMA, the general framework of discovery and other sections of the proposed rules confirm that the second sentence of this subsection should instead read (proposed amendment in italics): ''The [MLC] may give notice of and take up to five depositions during the *second* discovery period.'' DiMA Comment at 9.

DiMA notes that the Judges requested specific comments with regard to reply submissions of the MLC, voicing the concern that the proposed rules as currently written ''would authorize the MLC to respond to submissions of the DLC and other opposing parties but the proposal would not authorize the MLC to seek discovery from those parties to support its submission.'' DiMA Comment at 9, quoting 84 FR at 9057.

DiMA posits that this reading of the proposed rules was perhaps the result of the inconsistencies discussed above that, when resolved, make clear that the second discovery period, the discovery period specifically set aside for the MLC in both the proposed rules and in the Joint Proposal, occurs after the DLC and other participants provide their responsive submissions and concurrent document productions and written disclosures. According to DiMA, the proposed rules already authorize the MLC to conduct discovery subsequent to the filing of responsive submissions by the DLC and other participants and prior to the filing of any reply submission by the MLC. DiMA Comment at 9.

For its part, NMPA ''observes that the Proposed Rule could be read as unfairly limiting the scope of discovery in the second discovery period for the MLC as compared to the scope of discovery in the first period applicable to the DLC and additional parties.'' NMPA Comment at 8. NMPA notes that proposed § 355.3(d) states that in the first discovery period, ''[a]ny document request shall be limited to documents that are Discoverable'' whereas proposed § 355.3(g)(1) states, with respect to the second discovery period, ''requests shall be limited to documents

[4] DiMA recommended that the Judges insert a lengthy phrase throughout proposed § 355 each time the term Digital Licensee Coordinator appears to account for the possibility that the Register does not designate a DLC (*i.e.,* or if no Digital Licensee Coordinator has been designated, interested Digital Music Providers and Significant Nonblanket Licensees representing more than half of the market for uses of musical works in Covered Activities, acting collectively). As a more efficient alternative, the Judges define the term Digital Licensee Coordinator to include either the entity that the Register designates or, if the Register does not designate a DLC, interested Digital Music Providers and Significant Nonblanket Licensees representing more than half of the market for uses of musical works in Covered Activities, acting collectively. As a corresponding change to the new definition of DLC, the Judges also removed paragraph (d) of section 355.1.

that are Discoverable and relevant to consideration of whether any counterproposal fulfills the requirements of 17 U.S.C. 115(d)(7) or one or more of the elements of this part.'' NMPA Comment at 8.[5] NMPA also requests that the Judges change paragraph (2) in the definition of Discoverable in proposed § 355.7 to read ''(2) Relevant to consideration of whether a proposal or response thereto fulfills the requirements in 17 U.S.C. 115(d)(7).'' According to NMPA, these requested changes should eliminate confusion concerning the MLC's ability to take discovery of the DLC and other parties regarding their respective responses to the MLC's proposal. NMPA Comment at 9.

The Judges find that DiMA's and NMPA's respective recommended modifications to the proposed rules in this area are reasonable and appropriate and therefore adopt them.

(c) DiMA Believes That Any Voluntary Agreement Must Be Agreed Upon Only by the MLC and the DLC Without Mandatory Participation or Approval of Other Participants

DiMA avers that §§ 355.4 and 355.6(d) of the proposed rules may not be consistent with the MMA because they include participants other than the MLC and the DLC in the negotiation periods and in any voluntary agreement that ultimately may result from those negotiations. According to DiMA, inclusion of such other participants is not mandated by the MMA and should be obviated by the MLC's and the DLC's roles as statutorily-designated representatives of their respective stakeholders. DiMA Comment at 10.

DiMA notes that § 355.4 of the proposed rules requires the participation of not only ''[t]he [MLC] [and] the [DLC],'' but also the participation of ''*interested copyright owners, interested Digital Music Providers, and interested Significant Nonblanket Licensees*'' (emphasis added by DiMA) in both negotiation periods within an administrative assessment proceeding, and sets the commencement of the first negotiation period for ''the day after the [Judges] give notice of all participants in the proceeding.'' DiMA notes that in explaining this provision and its timing, the Judges stated that they ''are loathe to encourage the MLC and the DLC, or other significant participants, to engage in negotiations for up to a month (or up to half the suggested negotiating period) before the [Judges] identify and give notice of the full roster of participants.'' DiMA Comment at 10, quoting the Judges' Rule Proposal, 84 FR at 9057.

DiMA notes that § 355.6(d) of the proposed rules likewise references voluntary agreements ''negotiated and agreed to by the [MLC] and the [DLC], *interested copyright owners, interested Digital Music Providers, and interested Significant Nonblanket Licensees*'' (emphasis added by DiMA).

DiMA contends, however, that the MMA does not require or encourage such broad participation. According to DiMA, under the MMA *only* the MLC and the DLC must agree to any negotiated voluntary agreement. DiMA consequently requests that the Judges modify the proposed rules to remove ''interested copyright owners, interested Digital Music Providers, and interested Significant Nonblanket Licensees'' from proposed §§ 355.4 and 355.6(d).[6] DiMA also requests that the Judges modify the proposed rules such that the first negotiation period will begin on the date of commencement of the proceeding to determine or adjust the administrative assessment. DiMA Comment at 12.[7]

The Judges believe that involvement in the settlement discussions between the MLC and DLC by other participants is appropriate and permitted—though not mandated—under the statute. At the same time, the Judges agree with DiMA's interpretation of the statute that only the MLC and DLC must agree to a voluntary settlement. Nevertheless, the Judges believe that the views of other participants may be helpful, and perhaps essential, for the Judges to determine whether good cause exists to exercise their discretion to reject a settlement. The Judges, therefore, have modified section 355.4 to clarify that participants other than the MLC and DLC may participate in settlement negotiations and may comment on any resulting settlement. In keeping with the accelerated timeline for administrative assessment proceedings, the Judges have imposed tight space limitations for comments, and abbreviated deadlines for comments and any reply by the settling parties. These limitations are subject to the general rules governing requests for enlargement in sections 303.3(c) and 303.7(b). The Judges have made a conforming change to section 303.3(c) to ensure that the rule governing requests for enlargement of space applies to space limitations set in section 355.4 and other provisions of subchapter B.

(d) Issues Relating to Fact Finding in Administrative Assessment Proceedings

DiMA's set of comments also addressed six areas regarding the fact finding process: (1) Flexibility in scheduling of the proceedings and related timing; (2) concurrent expert testimony; (3) necessity of hearings; (4) admissibility of deposition transcripts; (5) witness attendance at the hearing and review of transcripts; and (6) scope of mandatory document productions. NMPA's comment also addressed some of these areas. The Judges address each area is turn.

Flexibility in Proceeding Scheduling and Related Timing

DiMA agrees that the Judges' scheduling proposal, which DiMA views as more flexible than that DiMA and the NMPA proposed in their Joint Comment on the NOI, will allow the Judges to adopt a tailored schedule for each proceeding based on the circumstances of that proceeding and still retain the structural framework of the proceeding. DiMA Comment at 12. Likewise, NMPA states that it understands the Judges' desire for flexibility and agrees that a less structured schedule can still allow the Judges to conduct proceedings in a timely and efficient manner. NMPA believes that the Judges can establish the schedule in each particular proceeding with an eye toward commencing and completing the proceeding in accordance with the

[5] As discussed further below, NMPA does not believe that independent counterproposals are appropriate in the context of assessment proceedings. NMPA Comment at 8. As a result, NMPA requests that the Judges remove from proposed § 355.3(g)(1) the language ''and relevant to consideration of whether any counterproposal fulfills the requirements of 17 U.S.C. 115(d)(7) or one or more of the elements of this part.'' NMPA Comment at 8–9.

[6] DiMA contends that the MMA clearly contemplates the possibility of a negotiated, voluntary agreement between the MLC and the DLC (only), to which the entire industry would be bound, because, according to DiMA, the MLC and the DLC are statutorily-designated entities that by their nature represent the broad majority of their respective constituencies. DiMA avers that this aspect of the MMA contrasts with regulations governing settlements in royalty rate proceedings which, DiMA notes, explicitly state that a settlement can be reached by ''some or all of the parties,'' and that participants who are not parties to the agreement can file objections to the adoption of any such agreement. DiMA Comment at n. 3, citing 37 CFR 351.2(b)(2).

[7] DiMA notes that the Joint Proposal included the following MMA language to account for the possibility that a DLC may not be designated: ''(or if none has been designated, interested digital music providers and significant nonblanket licensees representing more than half of the market for uses of musical works in covered activities).'' DiMA recommends that this language be included throughout the proposed rules, as appropriate. DiMA Comment at n.2. As discussed in note 4 above, as an alternative, the Judges have defined the term Digital Licensee Coordinator to include the group of parties that DiMA suggests if the Register does not designate a DLC.

overall timetable set forth in the MMA. NMPA Comment at 3.

DiMA requests, however, that the Judges allot sufficient time after the close of the first and second discovery periods for the parties to incorporate relevant facts obtained through discovery into those submissions and to resolve discovery disputes that may arise. *Id.* at 13. DiMA also requests that the Judges consider incorporating a period of 3–5 days between the due date for opening and responsive submissions and the start of the first and second discovery periods to provide proceeding participants a few days to review the submissions and document productions and disclosures before commencing discovery activities. *Id.*

DiMA also notes that the Judges propose 60 days for the first discovery rather than the 75 days that the DiMA/NMPA Joint Comment had proposed. *See* proposed § 355.2(g)(1)(iii). The second discovery period would also be 60 days. DiMA asserts that there is justification for a longer first discovery period because the DLC will have to coordinate and negotiate with other parties involved in the first discovery period, whereas the MLC will be the lone party directing the second discovery period and will not be hindered by competing interests regarding noticing and taking depositions and deciding the number and extent of document requests. DiMA Comment at 13–14. DiMA contends that a longer discovery period is necessary and requests that the Judges reconsider a 75-day period for the first discovery period.

After careful consideration, the Judges decline to adopt DiMA's requests to lengthen the first discovery period and delay the commencement of the discovery periods. The timing provisions in the MMA for determining the Administrative Assessment are particularly compressed. The Judges believe that 60 days is a reasonable amount of time for discovery and that a longer period would only serve to restrict further an already short time frame for determining an Administrative Assessment.

Concurrent Expert Testimony

DiMA and NMPA each responded to the Judges' proposal regarding concurrent expert testimony. DiMA supports the Judges' inclusion of the concurrent testimony option and believes that this approach could assist the Judges in creating a more comprehensive record upon which they can base their determination and in answering questions the Judges may have. DiMA also believes that a concurrent testimony approach could allow the Judges more latitude to address any concerns they may have with regard to the proposals then at issue. According to DiMA, engaging in concurrent expert testimony may lead to efficiencies by allowing the experts to focus on the heart of the issues that remain in dispute, to explain their differing viewpoints on those issues, and to have the ability to examine those viewpoints in real time by the experts themselves, the Judges, and counsel.

Additionally, DiMA avers that concurrent expert testimony may be particularly useful where, as here, the proceeding will be very subject-matter specific and the issues addressed at the hearing will be fairly complex, technical, and nuanced. To the extent the Judges or the parties elect to use the concurrent evidence approach in a particular proceeding, DiMA recommends that the Judges consider how best to direct and focus such testimony to ensure that the process is efficient and orderly at the hearing. DiMA also supports inclusion of concurrent expert testimony as an option for testimony at the hearing either in addition to or in lieu of ''traditional'' expert testimony, as the circumstances may dictate, while at the same time making clear that, in the absence of a specific ruling to the contrary, ''traditional'' (*i.e.* non-concurrent) expert testimony will remain the default process and structure in administrative assessment proceedings. DiMA Comment at 13–14.

NMPA believes a concurrent evidence approach could help to narrow and clarify issues and permit immediate correction of testimony by one expert when another expert identifies mistakes in the first expert's testimony. Accordingly, NMPA does not object to the inclusion of language within proposed rule § 355.5(d) to permit a concurrent evidence procedure.

In light of uncertainties concerning the equities in particular proceedings, however, should the Judges adopt this approach, NMPA believes it would be helpful if, in any given proceeding, the Judges would solicit the views of the parties before requiring participation in a concurrent evidence procedure. NMPA Comment at 12–13.

The Judges adopt the concurrent evidence provision as proposed, but, consistent with NMPA's recommendation, will consider the views of any party regarding the implementation of a concurrent evidence approach in any particular Administrative Assessment proceeding. The Judges also confirm, consistent with DiMA's comment, that ''traditional'' expert testimony will remain the default process and structure in administrative assessment proceedings, *i.e.,* absent any ruling by the Judges establishing a concurrent form of receiving expert testimony.

Necessity of Hearings

DiMA notes that current proposed § 355.5(a) allows the Judges to issue a determination for the administrative assessment without a hearing. DiMA Comment at 15. DiMA believes that this option is inconsistent with the MMA. In particular, DiMA references sec. 115(d)(7)(D)(iii)(III), which, DiMA contends, mandates a hearing. DiMA Comment at 15. As a result, DiMA contends that the proposed rules should be modified to clarify that a hearing is a required phase of the administrative assessment proceeding unless a voluntary agreement is reached between the MLC and the DLC. In addition to what DiMA believes is a statutory mandate, DiMA also believes that a hearing would afford the Judges the opportunity to examine whatever portions of the proposed assessment they found to be deficient or otherwise inconsistent with the MMA and to make a determination consistent with 17 U.S.C. 115(d)(7). DiMA Comment at 16.

As a practical matter, the Judges agree that, absent a settlement, a hearing will be beneficial for developing a record as a foundation for an Administrative Assessment determination. Therefore, the Judges accept DiMA's recommendation to amend proposed § 355.5(a) to remove references to the Judges' consideration of filings submitted for a determination without a hearing.

Admissibility of Deposition Transcripts

As DiMA notes, the Judges' proposed rules allow the introduction of deposition transcripts pursuant to the rules and limitations of Federal Rule of Civil Procedure 32. 84 FR at 9058; proposed § 355.5(c). DiMA agrees with the Judges' position on this issue because, according to DiMA, submission of only the deposition testimony that is permitted under FRCP 32 will ensure that the Judges receive these materials in a way that does not require them to wade through many exploratory lines of questioning in discovery depositions and does not duplicate the live testimony of any hearing witnesses. DiMA Comment at 16. NMPA noted that ''the Joint Comments proposed that complete transcripts be admitted so relevant portions would be available as needed during the hearing without undue burden or delay. At the same time, NMPA understands the concerns

articulated by the [Judges]. What is critical is that pertinent deposition testimony be available for use by the parties as necessary during a hearing.'' NMPA Comment at 13. The Judges acknowledge NMPA's desire to have pertinent deposition testimony available during a hearing and believe that the current proposal will permit such access. As a practical matter, the Judges note that during an Administrative Assessment proceeding parties may submit deposition transcripts (and other exhibits) to the Judges. Once they are marked for identification, the entire transcript or a subset of it thereafter may be offered for admission into evidence during the hearing. Such submission is consistent with the current proposal. Therefore, the Judges adopt the rules in this area as proposed.

Witness Attendance at the Hearing and Review of Transcripts

As DiMA notes, proposed § 355.5(d) generally prohibits a witness, other than a party representative, from listening to or reviewing a transcript of another witness prior to testifying. DiMA Comment at 17. DiMA does not object to this provision with respect to fact witnesses but recommends a carve-out for expert witnesses ''as the testimony of expert witnesses is inherently different in nature and often benefits from learning additional facts from which expert opinions can be formed or adjusted.'' *Id.* DiMA believes such a carve-out is particularly useful where the Judges contemplate the possibility of concurrent expert testimony.

The Judges believe that a carve-out for expert witnesses is reasonable and appropriate and therefore adopt it.

Scope of Mandatory Document Productions

DiMA notes that proposed § 355.3(b), which deals with the initial Administrative Assessment proceeding, is inconsistent with proposed § 355.3(c), which deals with proceedings to adjust the Administrative Assessment, in that the latter requires the MLC to produce a three-year projection of costs, collections, and contributions whereas the former does not. DiMA recommends that the Judges modify the proposed rules to add the three-year projection requirement, beginning as of the license availability date, to § 355.3(b) both for the sake of consistency between proceedings and to provide the Judges with ''robust, relevant information that will be useful in making their ultimate determination.'' DiMA Comment at 18. DiMA believes that ''mandating projections for at least three years will provide more accurate long-term cost information and will thus more likely result in an administrative assessment that will not require as much adjustment in future years.'' *Id.* The Judges accept DiMA's request as appropriate and reasonable and adopt the modification as suggested.

DiMA also notes that the Judges have included in §§ 355.3(b)(2)(iii) and 355.3(c)(2)(v) a new, specific category of documents for mandatory production by the MLC (*i.e.,* processes for requesting proposals, inviting bids, ranking and selecting the proposals and bids of potential contracting and sub-contracting parties competitively (or by another method), including processes for ensuring the absence of overlapping ownership or other overlapping economic interests between the MLC or its members and any selected contracting or sub-contracting party). *Id.* at 18–19. DiMA supports this inclusion ''as these documents are directly relevant to the core question of 'reasonable' costs and are vital to a determination that is fair, accurate, and consistent with 17 U.S.C. 115(d)(7).'' *Id.* at 19.

NMPA, on the contrary, believes that the proposed provision seems unnecessary and potentially onerous. NMPA Comment at 10. NMPA believes that the proposed provision, which was not included in the Joint Comments of NMPA and DiMA, could be interpreted to require production of materials concerning virtually every contract of the MLC no matter how small. *Id.* NMPA also suggests that some of the proposed language concerning ''overlapping economic interests'' could be read to suggest an expansion of the Judges' role beyond what is contemplated under the MMA. NMPA requests that the Judges modify the proposed language (*i.e.,* first clause of proposed §§ 355.3(b)(2)(iii) and (c)(2)(v) concerning the MLC's choice of vendors) at the very least to include a materiality threshold of ten percent of the MLC's annual budget. NMPA Comment at 10–11. As currently proposed, NMPA fears that the provisions could be read as requiring that the MLC would need to produce every contract, proposal and bid—no matter how trivial or immaterial. NMPA Comment at 10. NMPA maintains that such a requirement would be enormously burdensome and could threaten timely completion of the proceeding. NMPA Comment at 10–11.

NMPA is also concerned about the second clause of proposed § 355.3(b)(2)(iii) and (c)(2)(v), which is addressed to ''ensuring the absence of overlapping ownership or other overlapping economic interests . . .''. NMPA Comment at 11. NMPA believes that this proposed language could be interpreted as suggesting that the Judges ''are somehow responsible for policing the policies and practices of the MLC with respect to conflicts of interest.'' *Id.* NMPA believes that the policies and practices of the MLC are adequately addressed in the MMA (*e.g.,* requirements of an annual report detailing the MLC's operations and expenditures and periodic audits to guard against ''fraud, abuse, waste, and the unreasonable use of funds''). NMPA Comment at 11 and n.9. NMPA notes that the MMA does not confer authority or responsibility to the Judges to enforce these provisions. NMPA contends that the Judges' authority under the MMA is limited to establishing the Administrative Assessment for the MLC in accordance with the criteria set forth in 17 U.S.C. 115(d)(7). NMPA Comment at 11. As a result, NMPA requests that the Judges eliminate the second clause of proposed § 355.3(b)(2)(iii) and (c)(2)(v).

As a preliminary matter, the Judges acknowledge NMPA's concerns regarding the costs of gathering and providing information with respect to the MLC's operations, but the Judges believe that the NMPA is reading the proposal's requirement with respect to vendors too broadly. The Judges do not seek the type of granular information that NMPA's broad reading of proposed § 355.3(b)(2)(iii) and (c)(2)(v) implies. Rather, the proposal should be read more literally as requiring the MLC to produce information about the *processes* it employs in requesting proposals, inviting bids, ranking and selecting the proposals and bids of potential contracting and sub-contracting parties competitively (or by another method), and the *processes* for ensuring the absence of overlapping ownership or other overlapping economic interests between the MLC or its members and any selected contracting or sub-contracting party. In other words, when the MLC is seeking to employ a vendor, will it submit requests for proposals and choose the lowest bid? Will the MLC create a list of preferred vendors and employ one or more of them on an as-needed basis? Or will the MLC use another process for conducting its operations? The Judges believe that such information is well within the Judges' authority to carry out its obligations under the MMA to determine whether the MLC's costs are reasonable. Additionally, even if such information will be contained in the MLC's annual report, that document will not necessarily be completed and

available for the Judges to consider. Going forward, in future assessment adjustment proceedings, if the required information is fully set forth in the most recent annual report, the MLC could submit the relevant pages from that document and confirm they remain applicable, in an attempt to satisfy this required document production. Accordingly, the Judges decline to adopt NMPA's proposed revisions.

(e) Responses to Other Requests for Comments

DiMA correctly pointed out that the Judges erred in the numbering of the subparagraphs of the definition of Purchased Content Locker Service in § 385.2. DiMA Comment at 19–20. The Judges modify the definition to revert the numbering of this definition to the numbering in the extant definition.

DiMA also noted an inconsistency in the proposal regarding the duration of the first negotiation period (*i.e.,* 45 days in proposed § 355.2(g)(1)(i) versus 60 days in proposed § 355.4(a)). DiMA supports a 60-day period.[8] In its comment NMPA noted the same discrepancy, and speculated that it might relate to the Judges' belief that the negotiation period should commence after the parties to the proceeding have been determined, rather than at the commencement of the proceeding as NMPA and DiMA had recommend in their Joint Proposal. NMPA Comment at 7.

The Judges are sympathetic to DiMA's concerns that there be adequate time to negotiate and therefore expand the first negotiation period to 60 days, but the Judges note their desire that all parties have the opportunity to play a meaningful role in the negotiation process and therefore will direct the MLC and the DLC, if any, to monitor the list of parties filing petitions to participate[9] and to include all petitioners in any ongoing negotiations.

DiMA notes what it believes is an internal inconsistency in the beginning of the first discovery period set forth in proposed § 355.2(g)(1)(iii) and the second discovery period set forth in proposed § 355.2(g)(1)(v) and the procedure for calculating due dates generally, set forth in proposed § 303.7(a). DiMA recommends a modification to § 355.2(g)(1)(iii). DiMA Comment at 21. The Judges believe that this recommendation is reasonable and appropriate and modify proposed § 355.2(g)(1) to enhance its clarity.

DiMA also highlights three parallel provisions in the proposed rules regarding the production of documents by the MLC concurrent with its opening submission in the initial administrative assessment proceeding (proposed § 355.3(b)(2)), in proceedings to adjust the assessment (proposed § 355.3(c)(2)) and by the DLC and other participants concurrent with their responsive submissions (proposed § 355.3(f)(2)). The first provision would require that the documents be filed with the Judges, while the second and third provision would not require such filing. DiMA believes that none of the provisions should require filing with the Judges and therefore recommends that the Judges modify proposed § 355.3(b)(2) to remove the filing requirement, which DiMA contends would help to promote efficiency in Administrative Assessment proceedings since the participants are likely to produce a broader scope of documents than the narrower subset of documents they ultimately will attach as exhibits to their submissions or use at the hearing. DiMA Comment at 21–22. In the interests of promoting such efficiency, the Judges accept DiMA's recommendation and modify proposed § 355.3(b)(2) to mirror the related provisions that DiMA references.

DiMA also highlights two parallel provisions in proposed §§ 355.3(b)(2)(iii) and 355.3(c)(2)(v) regarding documents the MLC must provide concurrently with its opening submission in the initial Administrative Assessment proceeding and in proceedings to adjust the Administrative Assessment. DiMA opines that the language in the two sections should be identical but that it currently varies and that such variation creates ambiguity and inconsistency. DiMA believes that the applicable language in proposed § 355.3(c)(2)(v) is clearer and should apply to proposed § 355.3(b)(2)(iii) also. DiMA Comment at 22–23. The Judges agree and accept DiMA's recommended modification.[10]

DiMA also highlights a phrase in proposed § 355.3(c)(2)(i) relating to the MLC's obligation to produce documents that identify and demonstrate ''costs, collections, and contributions as required by 17 U.S.C. 115(d)(7) . . . *including Collective Total Costs*''. DiMA Comment at 23 (emphasis added by DiMA). DiMA asserts that the addition of the italicized phrase is inconsistent with an equivalent provision in proposed § 355.3(b)(2)(i) and creates an ''unnecessary ambiguity'' because it suggests that there may be other costs that are relevant to the determination of the Administrative Assessment in addition to Collective Total Costs as that term is defined by the MMA. DiMA contends that there are no such other costs. As a result, DiMA recommends that the Judges strike the italicized language from proposed § 355.3(c)(2)(i). In the interests of avoiding ambiguity, the Judges accept the recommended change.

DiMA also highlights three sections of the rule proposal that address the mandatory written disclosures that the MLC, DLC, and other proceeding participants must provide concurrently with their submissions in the Administrative Assessment proceeding (*i.e.,* proposed §§ 355.3(b)(3), 355.3(c)(3), and 355.3(f)(3)). DiMA points out that although the substance of the written disclosures is generally consistent among the three subsections, the specific language of the proposed rules differs. DiMA recommends that the language of the three sections be harmonized and believes that the language of § 355.3(b)(3) is the clearest and therefore should be the model for each of the sections. DiMA Comment at 23–24. The Judges support the goal of harmonization of comparable provisions and therefore accept DiMA's recommended modifications.

DiMA also recommended that proposed § 355.3(e) addressing deposition notices be clarified by removing an ambiguity. DiMA Comment at 24. The Judges believe the recommended modification is appropriate and reasonable and therefore accept DiMA's recommended modification.[11]

DiMA also recommends that proposed § 350.1 be modified to clarify that Administrative Assessment proceedings are proceedings pursuant to 17 U.S.C. 801(b). The Judges believe that DiMA's recommended modification is appropriate and reasonable and

[8] NMPA likewise noted the discrepancy but did not advocate for a particular duration for the negotiation period. *See* NMPA Comment at 7.

[9] The Copyright Royalty Board's electronic filing and case management system, eCRB, maintains a list of participants for each proceeding. That list is updated automatically each time a petition to participate is accepted for filing.

[10] The revised provision states: ''The Collective's processes for requesting proposals, inviting bids, ranking and selecting the proposals and bids of potential contracting and sub-contracting parties competitively (or by another method), including processes for ensuring the absence of overlapping ownership or other overlapping economic interests between the Collective or its members and any selected contracting or sub-contracting party''. Proposed § 355.3(b)(2)(iii).

[11] The modified sentence states: ''The initial notice of deposition under this paragraph (e) must be delivered by email or other electronic means to all participants in the proceeding, and such notice shall be sent no later than seven days prior to the scheduled deposition date, unless the deposition is scheduled to occur less than seven days after the date of the notice by agreement of the parties and the deponent.'' Proposed § 355.3(e).

therefore they accept DiMA's recommended modification.[12]

DiMA comments that the Judges declined in the proposal to adopt certain changes to extant § 385.21(d), which DiMA contends would mitigate the need for future updates to part 385 which DiMA believes will likely be required after the Copyright Office adopts new regulations with respect to statements of account and the content and format of usage data that will be required to be reported to the MLC after the license availability date (as defined in the MMA) (*e.g.,* while the per-play calculation is currently performed by the service providers, DiMA anticipates that that responsibility will shift to the MLC (based on data reported by the service providers) once the blanket license becomes available). DiMA Comment at 25. The Judges believe that the proposed changes to extant rule 385.21(d) are reasonable and appropriate and therefore adopt them.

DiMA also recommended certain technical updates to proposed § 303.5 and related provisions that the Judges believe are appropriate and therefore adopt them.

NMPA correctly noted that the Judges proposed, incorrectly, to omit 385.31(d) regarding ''unauthorized use.'' NMPA Comment at 17. This provision will be unchanged from the extant provision.

NMPA also cautioned the Judges that an observation that the Judges made in the notice of proposed rulemaking regarding retaining the extant assessment if the Judges found that the MLC's proposal did not fulfill the requirements of 17 U.S.C. 115(d)(7) ''would seem to be inconsistent with the responsibilities entrusted to the [Judges] by Congress in relation to the administrative assessment.'' NMPA Comment at 3. NMPA states that the Judges must establish the Administrative Assessment in an amount that meets the requirements set forth in 17 U.S.C. 115(d)(7). According to NMPA, ''[i]f the correct amount happens to be the extant assessment, then retaining that assessment would be appropriate if it fulfills the requisite statutory criteria—but if it does not fulfill such criteria, then retaining the extant amount would be erroneous.'' NMPA Comment at 4. The Judges recognize that no matter what amount they choose as the Administrative Assessment, that choice must be consistent with the Judges' obligations under the Copyright Act as amended by the MMA and supported by evidence in the record.

In the Notice, the Judges also asked whether the DLC should be required (rather than permitted) to submit and support a counterproposal. 84 FR at 9057. NMPA believes that such a provision ''is not only unnecessary, but would be counterproductive.'' NMPA Comment at 5. NMPA contends that the DLC should comment on and respond to the MLC's proposal rather than submit a wholly separate one. *Id.* NMPA states that under the MMA, it is the MLC and not the DLC or any other party that is charged with the responsibility of ensuring that it fulfills its statutory duties. *Id.* NMPA contends that ''any legitimate proposal has to be based on the needs and budget of the MLC *as reasonably determined by the MLC* and supported by evidence offered in the administrative assessment proceeding.'' NMPA Comment at 6, emphasis by NMPA.[13]

As a result, NMPA supports proposed § 355.3(f) in its current form, which, according to NMPA, reflects the approach in the Joint Comments of NMPA and DiMA by requiring the DLC and other parties to respond to the MLC's proposal rather than submit competing proposals. NMPA Comment at 6. NMPA requests, however, that the Judges modify the proposed definition of ''Discoverable'' in proposed § 355.7 ''to ensure that it permits discovery of information relevant to both a proposal *or response thereto.*'' NMPA Comment at 6, emphasis original. NMPA also asks that the Judges eliminate the restriction in proposed § 355.3(g) that limits the scope of discovery taken by the MLC to discovery regarding counterproposals. NMPA states the ''[i]n order to reply to concerns raised by the DLC or others, the MLC must be permitted to take discovery on their *responsive submissions,* regardless of the precise nature or characterization of those responses.'' NMPA Comment at 6, emphasis original.

The Judges believe NMPA's proposed modifications are reasonable and appropriate and therefore adopt them. However, although the NMPA correctly notes that it is the MLC that has a *responsibility* under the MMA to identify its ''needs and budget,'' the DLC and the users of the musical works have a *commensurate* obligation under the MMA to bear the costs associated with operating the MLC. Nothing in the rules adopted herein prohibits the DLC (or any other participant that would bear any or all of the costs assessed) from proposing in its (or their) submissions, *on an itemized basis corresponding with the items in the MLC's proposal,* a rejection of, or substitution for, one *or more* of the provisions in the MLC proposal.

NMPA also suggests that the Judges add the word ''relevant'' to the current definitions of ''end user'' and ''stream'' in § 385.2 to avoid confusion regarding the usage of those terms in the regulation versus how those terms are used in the MMA, which, according to NMPA are used differently and in a less specific manner in the MMA than they are in part 385. NMPA Comment at 15–16.[14] The Judges believe that the current proposed regulations are sufficiently clear and therefore decline to adopt NMPA's suggested modifications to the definitions of end user and stream.

2. SoundExchange's Comment [15]

SoundExchange generally supports the proposed rules as they relate to pre-1972 recordings under secs. 112 and 114 of the Copyright Act and believes that the Judges should adopt these provisions substantially as proposed. SoundExchange Comment at 2.[16] Most of SoundExchange's comment addressed the definition of copyright owner and the SDARS Pre-1972 royalty deduction, which are discussed in turn below.[17]

(a) Definition of Copyright Owner

With respect to the definition of copyright owner in the proposed rules,

[12] The modified sentence states: ''The procedures set forth in part 355 of this subchapter shall govern administrative assessment proceedings pursuant to 17 U.S.C. 115(d) and 801(b)(8), and the procedures set forth in parts 351 through 354 of this subchapter shall govern all other proceedings pursuant to 17 U.S.C. 801(b).'' Proposed § 350.1.

[13] The NMPA asserts that the Administrative Assessment proceeding is fundamentally different from a royalty rate proceeding, in which the Judges typically consider competing proposals to determine the rate that best reflects the probable outcome of market-based negotiations. NMPA states that the Administrative Assessment is not meant to emulate market negotiations or choose between competing rates but is instead meant to capture the actual costs of operating the MLC. NMPA Comment at n.5.

[14] NMPA also notes that the Judges declined to add a sentence to the definition of ''eligible interactive stream'' that states: ''An Eligible Interactive Stream is a digital phonorecord delivery.'' NMPA Comment at 16. NMPA defers to the Judges' conclusion that such an addition is not necessary or helpful but notes that ''NMPA and DiMA understand 'Eligible Interactive Streams' to be digital phonorecord deliveries as per the MMA definition, and therefore subject to licensing under section 115.'' *Id.*

[15] SoundExchange did not address aspects of the proposed rules relating to the sec. 115 compulsory license. SoundExchange Comment at n.1.

[16] SoundExchange also encourages the Judges to approve its pending proposal, unrelated to the current rulemaking, to grant SoundExchange the authority to use proxy data to distribute statutory royalties in cases in which a licensee never provides a usable report of use. SoundExchange Comment at n.2.

[17] SoundExchange also recommended two technical changes to the proposed rules, both of which the Judges adopt as recommended.

SoundExchange addresses a concern that the Judges raised about potential unintended consequences that could occur by including ''rights owner'' as defined in sec. 1401(l)(2) of the Copyright Act in the definition of ''copyright owners.'' SoundExchange states that sec. 1401 is ''quite clear about what rights do, and do not, come with being a rights owner under sec. 1401(l)(2).'' Moreover, SoundExchange ''does not believe that anyone could reasonably see the references to both copyright owners and rights owners within [the proposed definitions] and infer that those two concepts are redundant and mean the same thing for all purposes under the Copyright Act.'' SoundExchange Comment at 4. Nevertheless, SoundExchange suggests a proposed modification to the definition of Copyright Owners in § 370.1 to distinguish between copyright owners under 17 U.S.C. 101 and rights owners under 17 U.S.C. 1401(l)(2).[18] The Judges believe the modification SoundExchange suggests addresses the concern of unintended consequences or confusion over the use of the term copyright owners to refer to copyright owners and rights owners. Therefore the Judges adopt the suggested modification.

(b) SDARS Pre-1972 Deduction

SoundExchange also addressed the proposed amendments to part 382, subpart C, concerning adjustment of statutory royalty payment for SDARS to reflect use of sound recordings fixed before February 15, 1972, which SoundExchange contended in its comment to the NOI ''have become inoperative by their terms.'' 84 FR at 9060, quoting SoundExchange Comment on Notice of Inquiry at 6. Although the Judges proposed the amendments as SoundExchange had recommended, the Judges requested comment on the effect, if any, the proposed modifications would have on computation of royalties when an SDARS plays pre-1972 sound recordings that have fallen into the public domain. 84 FR at 9060. SoundExchange acknowledges that beginning in 2022, there will be sound recordings in the public domain. Nevertheless, SoundExchange believes that because these sound recordings will be roughly a century or more old when that occurs that the possibility of Sirius XM using public domain recordings seems more theoretical than real. SoundExchange Comment at 6. SoundExchange tried to identify such recordings used by Sirius XM in a recent month and found that of the million sound recording plays during the month, only a ''handful of plays'' seemed potentially to involve recordings originally released before 1923. *Id.* at 8. By contrast, the extant pre-1972 deduction addressed 10–15% of Sirius XM's actual usage when the Judges adopted it in 2013. SoundExchange Comment at 9, citing *SDARS II,* 78 FR 23054, 23071 (Apr. 17, 2013). SoundExchange notes that the pre-1972 deduction is inoperative today and will have no material effect during the current rate period. SoundExchange Comment at 9. Moreover, SoundExchange is concerned that Sirius XM could misapply any permissible deduction and that the extant regulations could be misread as allowing a royalty deduction for recordings ''fixed before February 15, 1972'' when no such deduction is available through 2021, and in 2022 and 2023 a deduction would only apply to original recordings published before 1923. *Id.*

The Judges believe that SoundExchange has adequately addressed concerns over an SDARS use of recordings that will enter the public domain and therefore adopt the regulations related to pre-1972 sound recordings as proposed.

(c) Proposed Technical Corrections

SoundExchange also recommended two technical corrections, both of which the Judges find reasonable and appropriate and adopt. In particular, SoundExchange correctly noted that the authority citation for part 370 should reference sec. 114(f)(3)(A) rather than 114(f)(4)(A) to reflect the renumbering of the paragraphs of sec. 114(f) in the MMA. SoundExchange also noted that the definition of ''Copyright Owner'' in § 383.2(b) should refer to a copyright owner *or* (as opposed to *and* in the current proposal) a rights owner under sec. 1401(l)(2). SoundExchange Comment at 10.

List of Subjects

37 CFR Part 303

Administrative practice and procedure, Copyright, Lawyers.

37 CFR Part 350

Administrative practice and procedure, Copyright.

37 CFR Part 355

Administrative assessment, Administrative practice and procedure, Copyright.

37 CFR Parts 370 and 380

Copyright, Sound recordings.

37 CFR Parts 382 and 383

Copyright, Digital audio transmissions, Performance right, Sound recordings.

37 CFR Part 384

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

37 CFR Part 385

Copyright, Phonorecords, Recordings.

For the reasons stated in the preamble, the Copyright Royalty Judges amend 37 CFR chapter III as set forth below:

SUBCHAPTER A—GENERAL PROVISIONS

■ 1. Add part 303 to read as follows:

PART 303—GENERAL ADMINISTRATIVE PROVISIONS

Sec.
303.1 [Reserved]
303.2 Representation.
303.3 Documents: Format and length.
303.4 Content of motion and responsive pleadings.
303.5 Electronic filing system (eCRB).
303.6 Filing and delivery.
303.7 Time.
303.8 Construction and waiver.

Authority: 17 U.S.C. 803.

§ 303.1 [Reserved]

§ 303.2 Representation.

Individual parties in proceedings before the Judges may represent themselves or be represented by an attorney. All other parties must be represented by an attorney. Cf. Rule 49(c)(11) of the Rules of the District of Columbia Court of Appeals. The appearance of an attorney on behalf of any party constitutes a representation that the attorney is a member of the bar, in one or more states, in good standing.

§ 303.3 Documents: Format and length.

(a) *Format*—(1) *Caption and description.* Parties filing pleadings and documents in a proceeding before the Copyright Royalty Judges must include on the first page of each filing a caption that identifies the proceeding by proceeding type and docket number, and a heading under the caption describing the nature of the document. In addition, to the extent technologically feasible using software available to the general public, Parties

[18] As an alternative that SoundExchange sees as less satisfactory, SoundExchange suggests that the Judges could adopt a new term that is neither copyright owner nor rights owner to refer to a group that includes both. The Judges agree that such an alternative would be less satisfaction than the first alternative that SoundExchange proposes.

must include a footer on each page after the page bearing the caption that includes the name and posture of the filing party, *e.g.,* [Party's] Motion, [Party's] Response in Opposition, etc.

(2) *Page layout.* Parties must submit documents that are typed (double spaced) using a serif typeface (*e.g.,* Times New Roman) no smaller than 12 points for text or 10 points for footnotes and formatted for 8 ½″ by 11″ pages with no less than 1 inch margins. Parties must assure that, to the extent technologically feasible using software available to the general public, any exhibit or attachment to documents reflects the docket number of the proceeding in which it is filed and that all pages are numbered appropriately. Any party submitting a document to the Copyright Royalty Board in paper format must submit it unfolded and produced on opaque 8 ½ by 11 inch white paper using clear black text, and color to the extent the document uses color to convey information or enhance readability.

(3) *Binding or securing.* Parties submitting any paper document to the Copyright Royalty Board must bind or secure the document in a manner that will prevent pages from becoming separated from the document. For example, acceptable forms of binding or securing include: Ring binders; spiral binding; comb binding; and for documents of fifty pages or fewer, a binder clip or single staple in the top left corner of the document. Rubber bands and paper clips are not acceptable means of securing a document.

(b) *Additional format requirements for electronic documents*—(1) *In general.* Parties filing documents electronically through eCRB must follow the requirements of paragraphs (a)(1) and (2) of this section and the additional requirements in paragraphs (b)(2) through (10) of this section.

(2) *Pleadings; file type.* Parties must file all pleadings, such as motions, responses, replies, briefs, notices, declarations of counsel, and memoranda, in Portable Document Format (PDF).

(3) *Proposed orders; file type.* Parties filing a proposed order as required by § 303.4 must prepare the proposed order as a separate Word document and submit it together with the main pleading.

(4) *Exhibits and attachments; file types.* Parties must convert electronically (not scan) to PDF format all exhibits or attachments that are in electronic form, with the exception of proposed orders and any exhibits or attachments in electronic form that cannot be converted into a usable PDF file (such as audio and video files, files that contain text or images that would not be sufficiently legible after conversion, or spreadsheets that contain too many columns to be displayed legibly on an 8 ½″ x 11″ page). Participants must provide electronic copies in their native electronic format of any exhibits or attachments that cannot be converted into a usable PDF file. In addition, participants may provide copies of other electronic files in their native format, in addition to PDF versions of those files, if doing so is likely to assist the Judges in perceiving the content of those files.

(5) *No scanned pleadings.* Parties must convert every filed document directly to PDF format (using ''print to pdf'' or ''save to pdf''), rather than submitting a scanned PDF image. The Copyright Royalty Board will NOT accept scanned documents, except in the case of specific exhibits or attachments that are available to the filing party only in paper form.

(6) *Scanned exhibits.* Parties must scan exhibits or other documents that are only available in paper form at no less than 300 dpi. All exhibits must be searchable. Parties must scan in color any exhibit that uses color to convey information or enhance readability.

(7) *Bookmarks.* Parties must include in all electronic documents appropriate electronic bookmarks to designate the tabs and/or tables of contents that would appear in a paper version of the same document.

(8) *Page rotation.* Parties must ensure that all pages in electronic documents are right side up, regardless of whether they are formatted for portrait or landscape printing.

(9) *Signature.* The signature line of an electronic pleading must contain ''/s/'' followed by the signer's typed name. The name on the signature line must match the name of the user logged into eCRB to file the document.

(10) *File size.* The eCRB system will not accept PDF or Word files that exceed 128 MB, or files in any other format that exceed 500 MB. Parties may divide excessively large files into multiple parts if necessary to conform to this limitation.

(c) *Length of submissions.* Whether filing in paper or electronically, parties must adhere to the following space limitations or such other space limitations as set forth in subchapter B or as the Copyright Royalty Judges may direct by order. Any party seeking an enlargement of the applicable page limit must make the request by a motion to the Copyright Royalty Judges filed no fewer than three days prior to the applicable filing deadline. Any order granting an enlargement of the page limit for a motion or response shall be deemed to grant the same enlargement of the page limit for a response or reply, respectively.

(1) *Motions.* Motions must not exceed 20 pages and must not exceed 5000 words (exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery).

(2) *Responses.* Responses in support of or opposition to motions must not exceed 20 pages and must not exceed 5000 words (exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery).

(3) *Replies.* Replies in support of motions must not exceed 10 pages and must not exceed 2500 words (exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery).

§ 303.4 Content of motion and responsive pleadings.

A motion, responsive pleading, or reply must, at a minimum, state concisely the specific relief the party seeks from the Copyright Royalty Judges, and the legal, factual, and evidentiary basis for granting that relief (or denying the relief sought by the moving party). A motion, or a responsive pleading that seeks alternative relief, must be accompanied by a proposed order.

§ 303.5 Electronic filing system (eCRB).

(a) *Documents to be filed by electronic means.* Except as otherwise provided in this chapter, all attorneys must file documents with the Copyright Royalty Board through eCRB. Pro se parties may file documents with the Copyright Royalty Board through eCRB, subject to § 303.4(c)(2).

(b) *Official record.* The electronic version of a document filed through and stored in eCRB will be the official record of the Copyright Royalty Board.

(c) *Obtaining an electronic filing password*—(1) *Attorneys.* An attorney must obtain an eCRB password from the Copyright Royalty Board in order to file documents or to receive copies of orders and determinations of the Copyright Royalty Judges. The Copyright Royalty Board will issue an eCRB password after the attorney applicant completes the application form available on the CRB website.

(2) *Pro se parties.* A party not represented by an attorney (a pro se party) may obtain an eCRB password from the Copyright Royalty Board with permission from the Copyright Royalty Judges, in their discretion. Once the

Copyright Royalty Board has issued an eCRB password to a pro se party, that party must make all subsequent filings by electronic means through eCRB.

(3) *Claimants.* Any person desiring to file a claim with the Copyright Royalty Board for copyright royalties may obtain an eCRB password for the limited purpose of filing claims by completing the application form available on the CRB website.

(d) *Use of an eCRB password.* An eCRB password may be used only by the person to whom it is assigned, or, in the case of an attorney, by that attorney or an authorized employee or agent of that attorney's law office or organization. The person to whom an eCRB password is assigned is responsible for any document filed using that password.

(e) *Signature.* The use of an eCRB password to login and submit documents creates an electronic record. The password operates and serves as the signature of the person to whom the password is assigned for all purposes under this chapter III.

(f) *Originals of sworn documents.* The electronic filing of a document that contains a sworn declaration, verification, certificate, statement, oath, or affidavit certifies that the original signed document is in the possession of the attorney or pro se party responsible for the filing and that it is available for review upon request by a party or by the Copyright Royalty Judges. The filer must file through eCRB a scanned copy of the signature page of the sworn document together with the document itself.

(g) *Consent to delivery by electronic means.* An attorney or pro se party who obtains an eCRB password consents to electronic delivery of all documents, subsequent to the petition to participate, that are filed by electronic means through eCRB. Counsel and pro se parties are responsible for monitoring their email accounts and, upon receipt of notice of an electronic filing, for retrieving the noticed filing. Parties and their counsel bear the responsibility to keep the contact information in their eCRB profiles current.

(h) *Accuracy of docket entry.* A person filing a document by electronic means is responsible for ensuring the accuracy of the official docket entry generated by the eCRB system, including proper identification of the proceeding, the filing party, and the description of the document. The Copyright Royalty Board will maintain on its website (*www.loc.gov/crb*) appropriate guidance regarding naming protocols for eCRB filers.

(i) *Documents subject to a protective order.* A person filing a document by electronic means must ensure, at the time of filing, that any documents subject to a protective order are identified to the eCRB system as ''restricted'' documents. This requirement is in addition to any requirements detailed in the applicable protective order. Failure to identify documents as ''restricted'' to the eCRB system may result in inadvertent publication of sensitive, protected material.

(j) *Exceptions to requirement of electronic filing*—(1) *Certain exhibits or attachments.* Parties may file in paper form any exhibits or attachments that are not in a format that readily permits electronic filing, such as oversized documents; or are illegible when scanned into electronic format. Parties filing paper documents or things pursuant to this paragraph must deliver legible or usable copies of the documents or things in accordance with § 303.6(a)(2) and must file electronically a notice of filing that includes a certificate of delivery.

(2) *Pro se parties.* A pro se party may file documents in paper form and must deliver and accept delivery of documents in paper form, unless the pro se party has obtained an eCRB password.

(k) *Privacy requirements.* (1) Unless otherwise instructed by the Copyright Royalty Judges, parties must exclude or redact from all electronically filed documents, whether designated ''restricted'' or not:

(i) *Social Security numbers.* If an individual's Social Security number must be included in a filed document for evidentiary reasons, the filer must use only the last four digits of that number.

(ii) *Names of minor children.* If a minor child must be mentioned in a document for evidentiary reasons, the filer must use only the initials of that child.

(iii) *Dates of birth.* If an individual's date of birth must be included in a pleading for evidentiary reasons, the filer must use only the year of birth.

(iv) *Financial account numbers.* If a financial account number must be included in a pleading for evidentiary reasons, the filer must use only the last four digits of the account identifier.

(2) Protection of personally identifiable information. If any information identified in paragraph (k)(1) of this section must be included in a filed document, the filing party must treat it as confidential information subject to the applicable protective order. In addition, parties may treat as confidential, and subject to the applicable protective order, other personal information that is not material to the proceeding.

(l) *Incorrectly filed documents.* (1) The Copyright Royalty Board may direct an eCRB filer to re-file a document that has been incorrectly filed, or to correct an erroneous or inaccurate docket entry.

(2) If an attorney or a pro se party who has been issued an eCRB password inadvertently presents a document for filing in paper form, the Copyright Royalty Board may direct the attorney or pro se party to file the document electronically. The document will be deemed filed on the date it was first presented for filing if, no later than the next business day after being so directed by the Copyright Royalty Board, the attorney or pro se participant files the document electronically. If the party fails to make the electronic filing on the next business day, the document will be deemed filed on the date of the electronic filing.

(m) *Technical difficulties.* (1) A filer encountering technical problems with an eCRB filing must immediately notify the Copyright Royalty Board of the problem either by email or by telephone, followed promptly by written confirmation.

(2) If a filer is unable due to technical problems to make a filing with eCRB by an applicable deadline, and makes the notification required by paragraph (m)(1) of this section, the filer shall use electronic mail to make the filing with the CRB and deliver the filing to the other parties to the proceeding. The filing shall be considered to have been made at the time it was filed by electronic mail. The Judges may direct the filer to refile the document through eCRB when the technical problem has been resolved, but the document shall retain its original filing date.

(3) The inability to complete an electronic filing because of technical problems arising in the eCRB system may constitute ''good cause'' (as used in § 303.6(b)(4)) for an order enlarging time or excusable neglect for the failure to act within the specified time, provided the filer complies with paragraph (m)(1) of this section. This section does not provide authority to extend statutory time limits.

§ 303.6 Filing and delivery.

(a) *Filing of pleadings*—(1) *Electronic filing through eCRB.* Except as described in § 303.5(l)(2), any document filed by electronic means through eCRB in accordance with § 303.5 constitutes filing for all purposes under this chapter, effective as of the date and time the document is received and timestamped by eCRB.

(2) *All other filings.* For all filings not submitted by electronic means through eCRB, the submitting party must deliver an original, five paper copies, and one electronic copy in Portable Document Format (PDF) on an optical data storage medium such as a CD or DVD, a flash memory device, or an external hard disk drive to the Copyright Royalty Board in accordance with the provisions described in § 301.2 of this chapter. In no case will the Copyright Royalty Board accept any document by facsimile transmission or electronic mail, except with prior express authorization of the Copyright Royalty Judges.

(b) *Exhibits.* Filers must include all exhibits with the pleadings they support. In the case of exhibits not submitted by electronic means through eCRB, whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Copyright Royalty Judges will consider a motion, made in advance of the filing, to reduce the number of required copies. *See* § 303.5(j).

(c) *English language translations.* Filers must accompany each submission that is in a language other than English with an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified, so long as the responding party's translation proves a substantive, relevant difference in the document.

(d) *Affidavits.* The testimony of each witness must be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony. *See* § 303.5(f).

(e) *Subscription*—(1) *Parties represented by counsel.* Subject to § 303.5(e), all documents filed electronically by counsel must be signed by at least one attorney of record and must list the attorney's full name, mailing address, email address (if any), telephone number, and a state bar identification number. *See* § 303.5(e). Submissions signed by an attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that the contents of the document are true and correct, to the best of the signer's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances and:

(i) The document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(ii) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted by the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(2) *Parties representing themselves.* The original of all paper documents filed by a party not represented by counsel must be signed by that party and list that party's full name, mailing address, email address (if any), and telephone number. The party's signature will constitute the party's certification that, to the best of his or her knowledge and belief, there is good ground to support the document, and that it has not been interposed for purposes of delay.

(f) *Responses and replies.* Responses in support of or opposition to motions must be filed within ten days of the filing of the motion. Replies to responses must be filed within five days of the filing of the response.

(g) *Participant list.* The Copyright Royalty Judges will compile and distribute to those parties who have filed a valid petition to participate the official participant list for each proceeding, including each participant's mailing address, email address, and whether the participant is using the eCRB system for filing and receipt of documents in the proceeding. For all paper filings, a party must deliver a copy of the document to counsel for all other parties identified in the participant list, or, if the party is unrepresented by counsel, to the party itself. Parties must notify the Copyright Royalty Judges and all parties of any change in the name or address at which they will accept delivery and must update their eCRB profiles accordingly.

(h) *Delivery method and proof of delivery*—(1) *Electronic filings through eCRB.* Electronic filing of any document through eCRB operates to effect delivery of the document to counsel or pro se participants who have obtained eCRB passwords, and the automatic notice of filing sent by eCRB to the filer constitutes proof of delivery. Counsel or parties who have not yet obtained eCRB passwords must deliver and receive delivery as provided in paragraph (h)(2) of this section. Parties making electronic filings are responsible for assuring delivery of all filed documents to parties that do not use the eCRB system.

(2) *Other filings.* During the course of a proceeding, each party must deliver all documents that they have filed other than through eCRB to the other parties or their counsel by means no slower than overnight express mail sent on the same day they file the documents, or by such other means as the parties may agree in writing among themselves. Parties must include a proof of delivery with any document delivered in accordance with this paragraph.

§ 303.7 Time.

(a) *Computation.* To compute the due date for filing and delivering any document or performing any other act directed by an order of the Copyright Royalty Judges or the rules of the Copyright Royalty Board:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays, and Federal holidays when the period is less than 11 days, unless computation of the due date is stated in calendar days.

(3) Include the last day of the period, unless it is a Saturday, Sunday, Federal holiday, or a day on which the weather or other conditions render the Copyright Royalty Board's office inaccessible.

(4) As used in this rule, ''Federal holiday'' means the date designated for the observance of New Year's Day, Inauguration Day, Birthday of Martin Luther King, Jr., George Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day declared a Federal holiday by the President or the Congress.

(5) Except as otherwise described in this Chapter or in an order by the Copyright Royalty Judges, the Copyright Royalty Board will consider documents to be timely filed only if:

(i) They are filed electronically through eCRB and time-stamped by 11:59:59 p.m. Eastern time on the due date;

(ii) They are sent by U.S. mail, are addressed in accordance with § 301.2(a) of this chapter, have sufficient postage, and bear a USPS postmark on or before the due date;

(iii) They are hand-delivered by private party to the Copyright Office Public Information Office in accordance with § 301.2(b) of this chapter and received by 5:00 p.m. Eastern time on the due date; or

(iv) They are hand-delivered by commercial courier to the Congressional Courier Acceptance Site in accordance with § 301.2(c) of this chapter and

received by 4:00 p.m. Eastern time on the due date.

(6) Any document sent by mail and dated only with a business postal meter will be considered filed on the date it is actually received by the Library of Congress.

(b) *Extensions.* A party seeking an extension must do so by written motion. Prior to filing such a motion, a party must attempt to obtain consent from the other parties to the proceeding. An extension motion must state:

(1) The date on which the action or submission is due;

(2) The length of the extension sought;

(3) The date on which the action or submission would be due if the extension were allowed;

(4) The reason or reasons why there is good cause for the delay;

(5) The justification for the amount of additional time being sought; and

(6) The attempts that have been made to obtain consent from the other parties to the proceeding and the position of the other parties on the motion.

§ 303.8 Construction and waiver.

The regulations of the Copyright Royalty Judges in this chapter are intended to provide efficient and just administrative proceedings and will be construed to advance these purposes. For purposes of an individual proceeding, the provisions of subchapters A and B may be suspended or waived, in whole or in part, upon a showing of good cause, to the extent allowable by law.

SUBCHAPTER B—COPYRIGHT ROYALTY JUDGES RULES AND PROCEDURES

■ 2. Revise part 350 to read as follows:

PART 350—SCOPE

Sec.

Authority: 17 U.S.C. 803.

§ 350.1 Scope.

This subchapter governs procedures applicable to proceedings before the Copyright Royalty Judges in making determinations and adjustments pursuant to 17 U.S.C. 115(d) and 801(b). The procedures set forth in part 355 of this subchapter shall govern administrative assessment proceedings pursuant to 17 U.S.C. 115(d) and 801(b)(8), and the procedures set forth in parts 351 through 354 of this subchapter shall govern all other proceedings pursuant to 17 U.S.C. 801(b).

§ 350.2–350.4 [Reserved]

■ 3. Add part 355 to read as follows:

PART 355—ADMINISTRATIVE ASSESSMENT PROCEEDINGS

Sec.

Authority: 17 U.S.C. 801; 17 U.S.C. 115.

§ 355.1 Proceedings in general.

(a) *Scope.* This section governs proceedings before the Copyright Royalty Judges to determine or adjust the Administrative Assessment pursuant to the Copyright Act, 17 U.S.C. 115(d), including establishing procedures to enable the Copyright Royalty Judges to make necessary evidentiary or procedural rulings.

(b) *Rulings.* The Copyright Royalty Judges may make any necessary procedural or evidentiary rulings during any proceeding under this section and may, before commencing a proceeding under this section, make any rulings that will apply to proceedings to be conducted under this section.

(c) *Role of Chief Judge.* The Chief Copyright Royalty Judge, or an individual Copyright Royalty Judge designated by the Chief Copyright Royalty Judge, shall:

(1) Administer an oath or affirmation to any witness; and

(2) Rule on objections and motions.

§ 355.2 Commencement of proceedings.

(a) *Commencement of initial Administrative Assessment proceeding.* The Copyright Royalty Judges shall commence a proceeding to determine the initial Administrative Assessment by publication no later than July 8, 2019, of a notice in the **Federal Register** seeking the filing of petitions to participate in the proceeding.

(b) *Adjustments of the Administrative Assessment.* Following the determination of the initial Administrative Assessment, the Mechanical Licensing Collective, the Digital Licensee Coordinator, if any, and interested copyright owners, Digital Music Providers, or Significant Nonblanket Licensees may file a petition with the Copyright Royalty Judges to commence a proceeding to adjust the Administrative Assessment. Any petition for adjustment of the Administrative Assessment must be filed during the month of May and may not be filed earlier than 1 year following the most recent publication in the **Federal Register** of a determination of the Administrative Assessment by the Copyright Royalty Judges. The Copyright Royalty Judges shall accept a properly filed petition under this paragraph (b) as sufficient grounds to commence a proceeding to adjust the Administrative Assessment and shall publish a notice in the **Federal Register** in the month of June seeking petitions to participate in the proceeding.

(c) *Required participants.* The Mechanical Licensing Collective and the Digital Licensee Coordinator designated by the Register of Copyrights in accordance with 17 U.S.C. 115(d)(5) shall each file a petition to participate and shall participate in each Administrative Assessment proceeding under this section.

(d) *Other eligible participants.* A copyright owner, Digital Music Provider, or Significant Nonblanket Licensee may file a petition to participate in a proceeding under paragraph (a) or (b) of this section. The Copyright Royalty Judges shall accept petitions to participate filed under this paragraph (d) unless the Judges find that the petitioner lacks a significant interest in the proceeding.

(e) *Petitions to participate.* Each petition to participate filed under this section must include:

(1) A filing fee of $150;

(2) The full name, address, telephone number, and email address of the petitioner;

(3) The full name, address, telephone number, and email address of the person filing the petition and of the petitioner's representative, if either differs from the filer; and

(4) Factual information sufficient to establish that the petitioner has a significant interest in the determination of the Administrative Assessment.

(f) *Notice of identity of petitioners.* The Copyright Royalty Judges shall give notice to all petitioners of the identity of all other petitioners.

(g) *Proceeding Schedule.* (1) The Copyright Royalty Judges shall establish a schedule for the proceeding, which shall include dates for:

(i) A first negotiation period of 60 days, beginning on the date of commencement of the proceeding;

(ii) Filing of the opening submission by the Mechanical Licensing Collective described in § 355.3(b) or (c), with concurrent production of required documents and disclosures;

(iii) A period of 60 days, beginning on the day after the date the Mechanical Licensing Collective files its opening submission, for the Digital Licensee Coordinator and any other participant in the proceeding, other than the Mechanical Licensing Collective, to serve discovery requests and complete discovery pursuant to § 355.3(d);

(iv) Filing of responsive submissions by the Digital Licensee Coordinator and any other participant in the proceeding, with concurrent production of required documents and disclosures;

(v) A period of 60 days, beginning on the day after the due date for filing responsive submissions, for the Mechanical Licensing Collective to serve discovery requests and complete discovery of the Digital Licensee Coordinator and any other participant in the proceeding pursuant to § 355.3(g);

(vi) A second negotiation period of 14 days, commencing on the day after the end of the Mechanical Licensing Collective's discovery period;

(vii) Filing of a reply submission, if any, by the Mechanical Licensing Collective;

(viii) Filing of a joint pre-hearing submission by the Mechanical Licensing Collective, the Digital Licensee Coordinator, and any other participant in the hearing; and

(ix) A hearing on the record.

(2) The Copyright Royalty Judges may, for good cause shown and upon reasonable notice to all participants, modify the schedule, except no participant in the proceeding may rely on a schedule modification as a basis for delaying the scheduled hearing date. The Copyright Royalty Judges may alter the hearing schedule only upon a showing of extraordinary circumstances. No alteration of the schedule shall change the due date of the determination.

§ 355.3 Submissions and discovery.

(a) *Protective orders.* During the first negotiation period, the Mechanical Licensing Collective, the Digital Licensee Coordinator, and any other participants that are represented by counsel shall negotiate and agree upon a written protective order to preserve the confidentiality of any confidential documents, depositions, or other information exchanged or filed by the participants in the proceeding. No later than 15 days after the Judges' identification of participants, proponents of a protective order shall file with the Copyright Royalty Judges a motion for review and approval of the order. No participant in the proceeding shall distribute or exchange confidential documents, depositions, or other information with any other participant in the proceeding until the receiving participant affirms in writing its consent to the protective order governing the proceeding.

(b) *Submission by the Mechanical Licensing Collective in the initial Administrative Assessment proceeding.* (1) The Mechanical Licensing Collective shall file an opening submission, in accordance with the schedule the Copyright Royalty Judges adopt pursuant to § 355.2(g), setting forth and supporting the Mechanical Licensing Collective's proposed initial Administrative Assessment. The opening submission shall consist of a written statement, including any written testimony and accompanying exhibits, and include reasons why the proposed initial Administrative Assessment fulfills the requirements in 17 U.S.C. 115(d)(7).

(2) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall produce electronically and deliver by email to the other participants in the proceeding documents that identify and demonstrate:

(i) Costs, collections, and contributions as required by 17 U.S.C. 115(d)(7) through the License Availability Date and for the three calendar years following thereafter;

(ii) The reasonableness of the Collective Total Costs;

(iii) The Collective's processes for requesting proposals, inviting bids, ranking and selecting the proposals and bids of potential contracting and sub-contracting parties competitively (or by another method), including processes for ensuring the absence of overlapping ownership or other overlapping economic interests between the Collective or its members and any selected contracting or sub-contracting party; and

(iv) The reasons why the proposal fulfills the requirements in 17 U.S.C. 115(d)(7).

(3) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall provide electronically and deliver by email to the other participants in the proceeding written disclosures that:

(i) List the individuals with material knowledge of, and availability to provide testimony concerning, the proposed initial Administrative Assessment; and

(ii) For each listed individual, describe the subject(s) of his or her knowledge.

(c) *Submission by the Mechanical Licensing Collective in proceedings to adjust the Administrative Assessment.* (1) The Mechanical Licensing Collective shall file an opening submission according to the schedule the Copyright Royalty Judges adopt pursuant to § 355.2(g). The opening submission shall set forth and support the Mechanical Licensing Collective's proposal to maintain or adjust the Administrative Assessment, including reasons why the proposal fulfills the requirements in 17 U.S.C. 115(d)(7). The opening submission shall include a written statement, any written testimony and accompanying exhibits, including financial statements from the three most recent years' operations of the Mechanical Licensing Collective with annual budgets as well as annual actual income and expense statements.

(2) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall produce electronically and deliver by email to the other participants in the proceeding documents that identify and demonstrate:

(i) Costs, collections, and contributions as required by 17 U.S.C. 115(d)(7) for the preceding three calendar years and the three calendar years following thereafter;

(ii) For the preceding three calendar years, the amount of actual Collective Total Costs that was not sufficiently funded by the prior Administrative Assessment, or the amount of any surplus from the prior Administrative Assessment after funding actual Collective Total Costs;

(iii) Actual collections from Digital Music Providers and Significant Nonblanket Licensees for the preceding three calendar years and anticipated collections for the three calendar years following thereafter;

(iv) The reasonableness of the Collective Total Costs; and

(v) The Collective's processes for requesting proposals, inviting bids, ranking and selecting the proposals and bids of potential contracting and sub-contracting parties competitively (or by another method), including processes for ensuring the absence of overlapping ownership or other overlapping economic interests between the Collective or its members and any selected contracting or sub-contracting party.

(3) Concurrently with the filing of the opening submission, the Mechanical Licensing Collective shall provide electronically and deliver by email to the other participants in the proceeding written disclosures that:

(i) List the individuals with material knowledge of, and availability to provide testimony concerning, the proposed adjusted Administrative Assessment; and

(ii) For each listed individual, describe the subject(s) of his or her knowledge.

(d) *First discovery period.* (1) During the first discovery period, the Digital Licensee Coordinator and any other participant in the proceeding other than the Mechanical Licensing Collective,

acting separately or represented jointly to the extent permitted by the concurrence of their interests, may serve requests for additional documents on the Mechanical Licensing Collective and any other participant in the proceeding. Any document request shall be limited to documents that are Discoverable.

(2) The Digital Licensee Coordinator and any other participant in the proceeding, other than the Mechanical Licensing Collective, may notice and take depositions as provided in paragraph (e) of this section.

(e) *Depositions.* The Digital Licensee Coordinator may give notice of and take up to five depositions during the first discovery period. To the extent any other participant eligible to take discovery during the first discovery period and whose interests may not be fully represented by either the Mechanical Licensing Collective or the Digital Licensee Coordinator seeks to notice and take a deposition, that participant shall first notify all other proceeding participants and the participants shall attempt, in good faith, to accommodate by agreement of the parties any deposition for which good cause is shown. If, after good faith discussions, the participants are unable to agree with respect to any such additional deposition, the participant seeking to take the deposition may file a motion pursuant to paragraph (h) of this section. The Mechanical Licensing Collective may give notice of and take up to five depositions during the second discovery period. Any deposition under this paragraph (e) shall be no longer than seven hours in duration on the record (exclusive of adjournments for lunch and other personal needs), with each deponent subject to a maximum of one seven-hour deposition in any Administrative Assessment proceeding, except as otherwise extended in this part, or upon a motion demonstrating good cause to extend the hour and day limits. In addition to the party noticing the deposition, any other parties to the proceeding may attend any depositions and shall have a right, but not an obligation, to examine the deponent during the final hour of the deposition, (except as that allocation of time may otherwise be stipulated by agreement of all participants attending the deposition), provided that any participant exercising its right to examine a deponent provides notice of that intent no later than two days prior to the scheduled deposition date. The initial notice of deposition under this paragraph (e) must be delivered by email or other electronic means to all participants in the proceeding, and such notice shall be sent no later than seven days prior to the scheduled deposition date, unless the deposition is scheduled to occur less than seven days after the date of the notice by agreement of the parties and the deponent. An individual is properly named as a deponent if that individual likely possesses information that meets the standards for document production under this part.

(f) *Responsive submissions by the Digital Licensee Coordinator and other participants.* The Digital Licensee Coordinator and any other participant in the proceeding shall file responsive submissions with the Copyright Royalty Judges in accordance with the schedule adopted by the Copyright Royalty Judges.

(1) Responsive submissions of the Digital Licensee Coordinator, and any other participant in the proceeding, shall consist of a written statement, including any written testimony and accompanying exhibits, stating the extent to which the filing participant agrees with the Administrative Assessment proposed by the Mechanical Licensing Collective. If the filing participant disagrees with all or part of the Administrative Assessment proposed by the Mechanical Licensing Collective, then the written statement, including any written testimony and accompanying exhibits, shall include analysis necessary to demonstrate why the Administrative Assessment proposed by the Mechanical Licensing Collective does not fulfill the requirements set forth in 17 U.S.C. 115(d)(7).

(2) Concurrently with the filing of a responsive submission indicating disagreement with the Administrative Assessment proposed by the Mechanical Licensing Collective, the filing participant shall produce electronically and deliver by email to the participants in and parties to the proceeding documents that demonstrate why the Administrative Assessment proposed by the Mechanical Licensing Collective does not fulfill the requirements set forth in 17 U.S.C. 115(d)(7).

(3) Concurrently with the filing of responsive submission(s), the filing participant shall provide electronically and deliver by email to the other participants in the proceeding written disclosures that:

(i) List the individuals with material knowledge of, and availability to provide testimony concerning, the reasons why the Administrative Assessment proposed by the Mechanical Licensing Collective does not fulfill the requirements set forth in 17 U.S.C. 115(d)(7); and

(ii) For each listed individual, describe the subject(s) of his or her knowledge.

(g) *Second discovery period.* (1) During the discovery period described in § 355.2(g)(1)(v), the Mechanical Licensing Collective may serve requests for additional documents on the Digital Licensee Coordinator and other parties to the proceeding. Such requests shall be limited to documents that are Discoverable.

(2) The Mechanical Licensing Collective may notice and take depositions as provided in paragraph (e) of this section.

(h) *Discovery disputes.* (1) Prior to invoking the procedures set forth in this paragraph (h), any participant that seeks intervention of the Copyright Royalty Judges to resolve a discovery dispute must first attempt in good faith to resolve the dispute between it and the other proceeding participant(s). All proceeding participants have a duty to, and shall, cooperate in good faith to resolve any such disputes without involvement of the Copyright Royalty Judges to the extent possible.

(2) In the event that two or more participants are unable to resolve a discovery dispute after good-faith consultation, a participant requesting discovery may file a motion and brief of no more than 1,500 words with the Copyright Royalty Judges. The motion must include a certification that the participant filing the motion attempted to resolve the dispute at issue in good faith, but was unable to do so. For a dispute involving the provision of documents or deposition testimony, the brief shall detail the reasons why the documents or deposition testimony are Discoverable.

(3) The responding participant may file a responsive brief of no more than 1,500 words within two business days of the submission of the initial brief.

(4) Absent unusual circumstances, the Copyright Royalty Judges will rule on the dispute within three business days of the filing of the responsive brief. Upon reasonable notice to the participants, the Chief Copyright Royalty Judge, or an individual Copyright Royalty Judge designated by the Chief Copyright Royalty Judge, may consider and rule on any discovery dispute in a telephone conference with the relevant participants.

(i) *Reply submissions by the Mechanical Licensing Collective.* The Mechanical Licensing Collective may file a written reply submission addressed only to the issues raised in any responsive submission(s) filed under paragraph (f) of this section in accordance with the schedule adopted

by the Copyright Royalty Judges, which reply may include written testimony, documentation, and analysis addressed only to the issues raised in responsive submission(s).

(j) *Joint pre-hearing submission.* No later than 14 days prior to the commencement of the hearing, the Mechanical Licensing Collective, the Digital Licensee Coordinator, and any other parties to the proceeding shall file jointly a written submission with the Copyright Royalty Judges, stating:

(1) Specific areas of agreement between the parties; and

(2) A concise statement of issues remaining in dispute with respect to the determination of the Administrative Assessment.

§ 355.4 Negotiation periods.

(a) *First negotiation period.* The Mechanical Licensing Collective and the Digital Licensee Coordinator shall, and other participants may, participate in good faith in a first negotiation period in an attempt to reach an agreement with respect to any issues in dispute regarding the Administrative Assessment, commencing on the day of commencement under § 355.2(a) or (b), as applicable, and lasting 60 days. The Mechanical Licensing Collective shall advise the other participants, via email, about the negotiations and invite them to participate, as those participants appear in the participant list in eCRB.

(b) *Second negotiation period.* The Mechanical Licensing Collective and the Digital Licensee Coordinator shall, and all other participants may, participate in good faith in a second negotiation period commencing on a date set by the Copyright Royalty Judges and lasting 14 days.

(c) *Written notification regarding result of negotiations.* By the close of a negotiation period, the Mechanical Licensing Collective and the Digital Licensee Coordinator shall file in eCRB a joint written notification indicating

(1) Whether they have reached an agreement, in whole or in part, with respect to issues in dispute regarding the Administrative Assessment,

(2) The details of any agreement,

(3) A description of any issues as to which they have not reached agreement, and

(4) A list of other participants that intend to join in any proposed settlement resulting from the agreement of the Mechanical Licensing Collective and the Digital Licensee Coordinator. Participants, other than the settling parties, may, within five days following the filing of a proposed settlement, file in eCRB comments (not to exceed ten pages and not to exceed 2500 words exclusive of cover pages, tables of contents, tables of authorities, signature blocks, exhibits, and proof of delivery) about the proposed settlement. The settling parties may, within five days following the comment deadline, file in eCRB a joint response to any comments.

§ 355.5 Hearing procedures.

(a) *En banc panel.* The Copyright Royalty Judges shall preside *en banc* over any hearing to determine the reasonableness of and the allocation of responsibility to contribute to the Administrative Assessment.

(b) *Attendance and participation.* The Mechanical Licensing Collective, through an authorized officer or other managing agent, and the Digital Licensee Coordinator, if any, through an authorized officer or other managing agent, shall attend and participate in the hearing. Any other entity that has filed a valid Petition to Participate and that the Copyright Royalty Judges have not found to be disqualified shall participate in an Administrative Assessment proceeding hearing. If the Copyright Royalty Judges find, *sua sponte* or upon motion of a participant, that a participant has failed substantially to comply with any of the requirements of this part, the Copyright Royalty Judges may exclude that participant from participating in the hearing; provided, however, that the Mechanical Licensing Collective and the Digital Licensee Coordinator shall not be subject to exclusion.

(c) *Admission of written submissions, deposition transcripts, and other documents.* Subject to any valid objections of a participant, the Copyright Royalty Judges shall admit into evidence at an Administrative Assessment hearing the complete initial, responsive, and reply submissions that the participants have filed. Participants shall not file deposition transcripts, but may utilize deposition transcripts for the purposes and under the conditions described in Fed. R. Civ. P. 32 and interpreting case law. Any participant may expand upon excerpts at the hearing or counter-designate excerpts in the written record to the extent necessary to provide appropriate context for the record. During the hearing, upon the oral request of any participant, any document proposed as an exhibit by any participant shall be admitted into evidence so long as that document was produced previously by any participant, subject only to a valid evidentiary objection.

(d) *Argument and examination of witnesses.* An Administrative Assessment hearing shall consist of the oral testimony of witnesses at the hearing and arguments addressed to the written submissions and oral testimony proffered by the participants, except that the Copyright Royalty Judges may, *sua sponte* or upon written or oral request of a participant, find good cause to dispense with the oral direct, cross, or redirect examination of a witness, and rely, in whole or in part, on that witness's written testimony. The Copyright Royalty Judges may, at their discretion, and in a procedure the Judges describe in a prehearing Scheduling Order, and after consideration of the positions of counsel for the participants, require expert witnesses to be examined concurrently by the Judges and/or the attorneys. If the Judges so order, the expert witnesses may then testify through a colloquy among themselves, including questions addressed to each other, as limited and directed by the Judges and subject to valid objections by counsel and ruled upon by the Judges. The concurrent examination procedure may be utilized in conjunction with, or in lieu of, traditional direct, cross, redirect and (with leave of the Judges) further direct or cross examination. In the absence of any order directing the use of concurrent examination, only the traditional form of examination described above shall be utilized. Only witnesses who have submitted written testimony or who were deposed in the proceeding may be examined at the hearing. A witness's oral testimony shall not exceed the subject matter of his or her written or deposition testimony. Unless the Copyright Royalty Judges, on motion of a participant, order otherwise, no witness, other than an expert witness or a person designated as a party representative for the proceeding, may listen to, or review a transcript of, testimony of another witness or witnesses prior to testifying.

(e) *Objections.* Participants may object to evidence on any proper ground, by written or oral objection, including on the ground that a participant seeking to offer evidence for admission has failed without good cause to produce the evidence during the discovery process. The Copyright Royalty Judges may, but are not required to, admit hearsay evidence to the extent they deem it appropriate.

(f) *Transcript and record.* The Copyright Royalty Judges shall designate an official reporter for the recording and transcribing of hearings. Anyone wishing to inspect the transcript of a hearing, to the extent the transcript is not restricted under a protective order, may do so when the hearing transcript is filed in the Copyright Royalty Judges' electronic

filing and case management system, eCRB, at *https://app.crb.gov* after the hearing concludes. The availability of restricted portions of any transcript shall be described in the protective order. Any participant desiring daily or expedited transcripts shall make separate arrangements with the designated court reporter.

§ 355.6 Determinations.

(a) *How made.* The Copyright Royalty Judges shall determine the amount and terms of the Administrative Assessment in accordance with 17 U.S.C. 115(d)(7). The Copyright Royalty Judges shall base their determination on their evaluation of the totality of the evidence before them, including oral testimony, written submissions, admitted exhibits, designated deposition testimony, the record associated with any motions and objections by participants, the arguments presented, and prior determinations and interpretations of the Copyright Royalty Judges (to the extent those prior determinations and interpretations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to 17 U.S.C. 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights made pursuant to 17 U.S.C. 802(f)(1)(D), or with a decision of the U.S. Court of Appeals for the D.C. Circuit).

(b) *Timing.* The Copyright Royalty Judges shall issue and cause their determination to be published in the **Federal Register** not later than one year after commencement of the proceeding under § 355.2(a) or, in a proceeding commenced under § 355.2(b), during June of the calendar year following the commencement of the proceeding.

(c) *Effectiveness.* (1) The initial Administrative Assessment determined in the proceeding under § 355.2(a) shall be effective as of the License Availability Date and shall continue in effect until the Copyright Royalty Judges determine or approve an adjusted Administrative Assessment under § 355.2(b).

(2) Any adjusted Administrative Assessment determined in a proceeding under § 355.2(b) shall take effect January 1 of the year following its publication in the **Federal Register**.

(d) *Adoption of voluntary agreements.* In lieu of reaching and publishing a determination, the Copyright Royalty Judges shall approve and adopt the amount and terms of an Administrative Assessment that has been negotiated and agreed to by the Mechanical Licensing Collective and the Digital Licensee Coordinator pursuant to § 355.4. Notwithstanding the negotiation of an agreed Administrative Assessment, however, the Copyright Royalty Judges may, for good cause shown, reject an agreement. If the Copyright Royalty Judges reject a negotiated agreed Administrative Assessment, they shall proceed with adjudication in accordance with the schedule in place in the proceeding. Rejection by the Copyright Royalty Judges of a negotiated agreed Administrative Assessment shall not prejudice the parties' ability to continue to negotiate and submit to the Copyright Royalty Judges an alternate agreed Administrative Assessment or resubmit an amended prior negotiated agreement that addresses the Judges' reasons for initial rejection at any time, including during a hearing or after a hearing at any time before the Copyright Royalty Judges issue a determination.

(e) *Continuing authority to amend.* The Copyright Royalty Judges shall retain continuing authority to amend a determination of an Administrative Assessment to correct technical or clerical errors, or modify the terms of implementation, for good cause shown, with any amendment to be published in the **Federal Register**.

§ 355.7 Definitions.

Capitalized terms in this part that are defined terms in 17 U.S.C. 115(e) shall have the same meaning as set forth in 17 U.S.C. 115(e). In addition, for purposes of this part, the following definitions apply:

Digital Licensee Coordinator shall mean the entity the Register of Copyrights designates as the Digital Licensee Coordinator pursuant to 17 U.S.C. 115(d)(5)(B)(iii), or if the Register makes no such designation, interested Digital Music Providers and Significant Nonblanket Licensees representing more than half of the market for uses of musical works in Covered Activities, acting collectively.

Discoverable documents or deposition testimony are documents or deposition testimony that are:

(1) Nonprivileged;

(2) Relevant to consideration of whether a proposal or response thereto fulfills the requirements in 17 U.S.C. 115(d)(7); and

(3) Proportional to the needs of the proceeding, considering the importance of the issues at stake in the proceeding, the requested participant's relative access to responsive information, the participants' resources, the importance of the document or deposition request in resolving or clarifying the issues presented in the proceeding, and whether the burden or expense of producing the requested document or deposition testimony outweighs its likely benefit. Documents or deposition testimony need not be admissible in evidence to be Discoverable.

SUBCHAPTER D—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

■ 4. The authority citation for part 370 is revised to read as follows:

Authority: 17 U.S.C. 112(e)(4), 114(f)(3)(A).

■ 5. In § 370.1:
■ a. Remove the paragraph designations;
■ b. Remove the word ''A'' at the beginning of each definition;
■ c. Arrange the definitions in alphabetical order; and
■ d. Add the definition of ''Copyright Owners'' in alphabetical order.

The addition reads as follows:

§ 370.1 General definitions.

* * * * *

Copyright Owners means sound recording copyright owners under 17 U.S.C. 101, and rights owners under 17 U.S.C. 1401(l)(2), who are entitled to royalty payments made pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

* * * * *

§ 370.4 [Amended]

■ 6. In § 370.4(b):
■ a. In the definition of ''Aggregate Tuning Hours'' remove ''United States copyright law'' and add in its place ''title 17, United States Code''; and
■ b. In paragraph (i) of the definition of ''Performance'', remove ''copyrighted'' and add in its place ''subject to protection under title 17, United States Code''.

SUBCHAPTER E—RATES AND TERMS FOR STATUTORY LICENSES

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 7. The authority citation for part 380 continues to read:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 8. In § 380.7:
■ a. Add introductory text;
■ b. Revise the definition of ''Copyright Owners'' and
■ c. In paragraph (1) of the definition of ''Performance'' remove ''copyrighted''

and add in its place ''subject to protection under title 17, United States Code''.

The addition and revisions read as follows:

§ 380.7 Definitions.

For purposes of this subpart, the following definitions apply:

* * * * *

Copyright Owners means sound recording copyright owners, and rights owners under 17 U.S.C. 1401(l)(2), who are entitled to royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

* * * * *

■ 9. In § 380.21:

■ a. In the definition of ''ATH'', remove ''United States copyright law'' and add in its place ''title 17, United States Code''; and

■ b. Revise the definition of ''Copyright Owners''; and

■ c. In paragraph (1) of the definition of ''Performance'', remove ''copyrighted'' and add in its place ''subject to protection under title 17, United States Code''.

The revision reads as follows:

§ 380.21 Definitions.

* * * * *

Copyright Owners are sound recording copyright owners, and rights owners under 17 U.S.C. 1401(l)(2), who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

* * * * *

■ 10. In § 380.31 revise the definition of ''Copyright Owners'' to read as follows:

§ 380.31 Definitions.

* * * * *

Copyright Owners are Sound Recording copyright owners, and rights owners under 17 U.S.C. 1401(l)(2), who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

* * * * *

PART 382—RATES AND TERMS FOR TRANSMISSIONS OF SOUND RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 11. The authority citation for part 382 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114 and 801(b)(1).

■ 12. In § 382.1, revise the definition of ''Copyright Owners'' to read as follows:

§ 382.1 Definitions.

* * * * *

Copyright Owners means sound recording copyright owners, and rights owners under 17 U.S.C. 1401(l)(2), who are entitled to royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

* * * * *

§ 382.20 [Amended]

■ 13. In § 382.20, remove the definition of ''Pre-1972 Recording''.

§ 382.23 [Amended]

■ 14. In § 382.23, remove paragraphs (a)(3) and (b) and redesignate paragraph (c) as paragraph (b).

PART 383—RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS AND THE REPRODUCTION OF EMPHEMERAL RECORDINGS BY CERTAIN NEW SUBSCRIPTION SERVICES

■ 15. The authority citation for part 383 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

■ 16. In § 383.2, revise paragraph (b) to read as follows:

§ 383.2 Definitions.

* * * * *

(b) *Copyright Owner* means a sound recording copyright owner, or a rights owner under 17 U.S.C. 1401(l)(2), who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

* * * * *

PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES

■ 17. The authority citation for part 384 continues to read as follows:

Authority: 17 U.S.C. 112(e), 801(b)(1).

■ 18. In § 384.2, revise the definition of ''Copyright Owners'' to read as follows:

§ 384.2 Definitions.

* * * * *

Copyright Owners are sound recording copyright owners, and rights owners under 17 U.S.C. 1401(l)(2), who are entitled to royalty payments made under this part pursuant to the statutory license under 17 U.S.C. 112(e).

* * * * *

§ 384.3 [Amended]

■ 19. In § 384.3:

■ a. In paragraph (a)(1), remove the word ''copyrighted'' and add the phrase ''subject to protection under title 17, United States Code'' after the word ''recordings'';

■ b. In paragraph (a)(2) introductory text:

■ i. Remove the word ''copyrighted'' in the first sentence and add the phrase ''subject to protection under title 17, United States Code,'' after the word ''recordings''; and

■ ii. Remove the word ''copyrighted'' in the second sentence and add the phrase ''subject to protection under title 17, United States Code,'' after the word ''recordings''; and

■ c. In paragraphs (a)(2)(i) and (ii), remove the word ''copyrighted'' each time it appears and add the phrase ''subject to protection under title 17, United States Code,'' after the word ''recordings'' each time it appears.

PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 20. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

■ 21. In § 385.2:

■ a. Add introductory text;

■ b. Revise the definitions of ''Accounting Period'' and ''Affiliate'';

■ c. In the definition of ''Bundled Subscription Offering'', add the term ''Eligible'' before the term ''Limited Downloads'' and remove the comma at the end of the definition and add a period in its place;

■ d. In the definition of ''Digital Phonorecord Delivery'' remove ''or DPD'' and remove ''17 U.S.C. 115(d)'' and add in its place ''17 U.S.C. 115(e)'';

■ e. Add definitions for ''Eligible Interactive Stream'' and ''Eligible Limited Download'' in alphabetical order;

■ f. Revise the definition for ''Free Trial Offering'';

■ g. Remove the definition of ''Interactive Stream'';

■ h. In the definition for ''Licensed Activity'':

■ i. Remove the word ''Digital'' between the words ''Permanent'' and ''Downloads'';

■ ii. Add the word ''Eligible'' before the term ''Interactive Streams''; and

■ iii. Add the word ''Eligible'' before the term ''Limited Downloads'';

■ i. Remove the definition for ''Limited Download'';

■ j Revise the definition for ''Limited Offering'';
■ k. In the definition for ''Locker Service'':
■ i. Add the term ''Eligible'' before the term ''Interactive Streams'';
■ ii. Remove the term ''Digital'' between the terms ''Permanent'' and ''Downloads''; and
■ iii. Remove the term ''the Service'' and add in its place ''the Service Provider'' each time it appears; and
■ iv. Remove the term ''Service's'' and add in its place ''Service Provider's''
■ l. In the definition of ''Mixed Service Bundle'':
■ i. Remove the term ''Digital'' between the terms ''Permanent'' and ''Downloads''; and
■ ii. Remove the term ''a Service'' and add in its place ''a Service Provider'';
■ m. In the definition for ''Music Bundle'':
■ i. Remove the term ''Digital'' between the words ''Permanent'' and ''Downloads'';
■ ii. Remove the term ''Service'' and add in its place the term ''Service Provider'' each time it appears; and
■ iii. Remove the term ''Record Company'' and add in its place the term ''Sound Recording Company'';
■ n. In the definition for ''Offering'' remove the term ''Service's'' and add in its place the term ''Service Provider's'';
■ o. In the definition of ''Paid Locker Service'', remove the term ''the Service'' and add in its place the term ''the Service Provider'';
■ p. Remove the definition of ''Permanent Digital Download'';
■ q. Add a definition for ''Permanent Download'' in alphabetical order;
■ r. In the definition for ''Play'':
■ i. Add the term ''Eligible'' before the term ''Interactive Stream'' each time it appears; and
■ ii. Remove the term ''a Limited Download'' and add in its place the term ''an Eligible Limited Download'' each time it appears;
■ s. Revise the definitions for ''Promotional Offering'' and ''Purchased Content Locker Service'';
■ t. Remove the definition for ''Record Company'';
■ u. In the definition of ''Relevant Page'':
■ i. In the first sentence, remove the term ''Service's'' and add in its place the term ''Service Provider's'' and add the term ''Eligible'' before the term ''Limited Downloads''; and
■ ii. In the second sentence, add the term ''Eligible'' before the term ''Limited Download'' and before the term ''Interactive Stream'';
■ v. In the definition of ''Restricted Download'' remove the term ''a Limited Download'' add in its place the term ''an Eligible Limited Download'';
■ w. Remove the definition of ''Service'';
■ x. Add the definitions for ''Service Provider'' and ''Service Provider Revenue'' in alphabetical order;
■ y. Remove the definition for ''Service Revenue'';
■ z. Add the definition for ''Sound Recording Company'' in alphabetical order;
■ aa. In the definition of ''Streaming Cache Reproduction'' remove the term ''Service'' and add in its place the term ''Service Provider'' each time it appears; and
■ bb. In the definition of ''Total Cost of Content'':
■ i. Remove the term ''Service'' and add in its place the term ''Service Provider'' each time it appears;
■ ii. Remove the term ''interactive streams'' and add in its place the term ''Eligible Interactive Streams'';
■ iii. Remove the term ''limited downloads'' and add in its place the term ''Eligible Limited Downloads''; and
■ iv. Remove the terms ''Record Company'' and ''record company'' and add in their place the term ''Sound Recording Company'' each time they appear.

The additions and revisions read as follows:

§ 385.2 Definitions.

For the purposes of this part, the following definitions apply:

Accounting Period means the monthly period specified in 17 U.S.C. 115(c)(2)(I) and in 17 U.S.C. 115(d)(4)(A)(i), and any related regulations, as applicable.

Affiliate means an entity controlling, controlled by, or under common control with another entity, except that an affiliate of a Sound Recording Company shall not include a Copyright Owner to the extent it is engaging in business as to musical works.

* * * * *

Eligible Interactive Stream means a Stream in which the performance of the sound recording is not exempt from the sound recording performance royalty under 17 U.S.C. 114(d)(1) and does not in itself, or as a result of a program in which it is included, qualify for statutory licensing under 17 U.S.C. 114(d)(2).

Eligible Limited Download means a transmission of a sound recording embodying a musical work to an End User of a digital phonorecord under 17 U.S.C. 115(c)(3)(C) and (D) that results in a Digital Phonorecord Delivery of that sound recording that is only accessible for listening for—

(1) An amount of time not to exceed one month from the time of the transmission (unless the Licensee, in lieu of retransmitting the same sound recording as another Eligible Limited Download, separately, and upon specific request of the End User made through a live network connection, reauthorizes use for another time period not to exceed one month), or in the case of a subscription plan, a period of time following the end of the applicable subscription no longer than a subscription renewal period or three months, whichever is shorter; or

(2) A number of times not to exceed 12 (unless the Licensee, in lieu of retransmitting the same sound recording as another Eligible Limited Download, separately, and upon specific request of the End User made through a live network connection, reauthorizes use of another series of 12 or fewer plays), or in the case of a subscription transmission, 12 times after the end of the applicable subscription.

* * * * *

Free Trial Offering means a subscription to a Service Provider's transmissions of sound recordings embodying musical works when:

(1) Neither the Service Provider, the Sound Recording Company, the Copyright Owner, nor any person or entity acting on behalf of or in lieu of any of them receives any monetary consideration for the Offering;

(2) The free usage does not exceed 30 consecutive days per subscriber per two-year period;

(3) In connection with the Offering, the Service Provider is operating with appropriate musical license authority and complies with the recordkeeping requirements in § 385.4;

(4) Upon receipt by the Service Provider of written notice from the Copyright Owner or its agent stating in good faith that the Service Provider is in a material manner operating without appropriate license authority from the Copyright Owner under 17 U.S.C. 115, the Service Provider shall within 5 business days cease transmission of the sound recording embodying that musical work and withdraw it from the repertoire available as part of a Free Trial Offering;

(5) The Free Trial Offering is made available to the End User free of any charge; and

(6) The Service Provider offers the End User periodically during the free usage an opportunity to subscribe to a non-free Offering of the Service Provider.

* * * * *

Limited Offering means a subscription plan providing Eligible Interactive Streams or Eligible Limited Downloads for which—

(1) An End User cannot choose to listen to a particular sound recording (*i.e.,* the Service Provider does not provide Eligible Interactive Streams of individual recordings that are on-demand, and Eligible Limited Downloads are rendered only as part of programs rather than as individual recordings that are on-demand); or

(2) The particular sound recordings available to the End User over a period of time are substantially limited relative to Service Providers in the marketplace providing access to a comprehensive catalog of recordings (*e.g.,* a product limited to a particular genre or permitting Eligible Interactive Streaming only from a monthly playlist consisting of a limited set of recordings).

* * * * *

Permanent Download has the same meaning as in 17 U.S.C. 115(e).

* * * * *

Promotional Offering means a digital transmission of a sound recording, in the form of an Eligible Interactive Stream or an Eligible Limited Download, embodying a musical work, the primary purpose of which is to promote the sale or other paid use of that sound recording or to promote the artist performing on that sound recording and not to promote or suggest promotion or endorsement of any other good or service and:

(1) A Sound Recording Company is lawfully distributing the sound recording through established retail channels or, if the sound recording is not yet released, the Sound Recording Company has a good faith intention to lawfully distribute the sound recording or a different version of the sound recording embodying the same musical work;

(2) For Eligible Interactive Streaming or Eligible Limited Downloads, the Sound Recording Company requires a writing signed by an authorized representative of the Service Provider representing that the Service Provider is operating with appropriate musical works license authority and that the Service Provider is in compliance with the recordkeeping requirements of § 385.4;

(3) For Eligible Interactive Streaming of segments of sound recordings not exceeding 90 seconds, the Sound Recording Company delivers or authorizes delivery of the segments for promotional purposes and neither the Service Provider nor the Sound Recording Company creates or uses a segment of a sound recording in violation of 17 U.S.C. 106(2) or 115(a)(2);

(4) The Promotional Offering is made available to an End User free of any charge; and

(5) The Service Provider provides to the End User at the same time as the Promotional Offering stream an opportunity to purchase the sound recording or the Service Provider periodically offers End Users the opportunity to subscribe to a paid Offering of the Service Provider.

Purchased Content Locker Service means a Locker Service made available to End User purchasers of Permanent Downloads, Ringtones, or physical phonorecords at no incremental charge above the otherwise applicable purchase price of the Permanent Downloads, Ringtones, or physical phonorecords acquired from a qualifying seller. With a Purchased Content Locker Service, an End User may receive one or more additional phonorecords of the purchased sound recordings of musical works in the form of Permanent Downloads or Ringtones at the time of purchase, or subsequently have digital access to the purchased sound recordings of musical works in the form of Eligible Interactive Streams, additional Permanent Downloads, Restricted Downloads, or Ringtones.

(1) A *qualifying seller* for purposes of this definition is the entity operating the Service Provider, including affiliates, predecessors, or successors in interest, or—

(i) In the case of Permanent Downloads or Ringtones, a seller having a legitimate connection to the locker service provider pursuant to one or more written agreements (including that the Purchased Content Locker Service and Permanent Downloads or Ringtones are offered through the same third party); or

(ii) In the case of physical phonorecords:

(A) The seller of the physical phonorecord has an agreement with the Purchased Content Locker Service provider establishing an integrated offer that creates a consumer experience commensurate with having the same Service Provider both sell the physical phonorecord and offer the integrated locker service; or

(B) The Service Provider has an agreement with the entity offering the Purchased Content Locker Service establishing an integrated offer that creates a consumer experience commensurate with having the same Service Provider both sell the physical phonorecord and offer the integrated locker service.

(2) [Reserved]

* * * * *

Service Provider means that entity governed by subparts C and D of this part, which might or might not be the Licensee, that with respect to the section 115 license:

(1) Contracts with or has a direct relationship with End Users or otherwise controls the content made available to End Users;

(2) Is able to report fully on Service Provider Revenue from the provision of musical works embodied in phonorecords to the public, and to the extent applicable, verify Service Provider Revenue through an audit; and

(3) Is able to report fully on its usage of musical works, or procure such reporting and, to the extent applicable, verify usage through an audit.

Service Provider Revenue. (1) Subject to paragraphs (2) through (5) of this definition and subject to GAAP, Service Provider Revenue shall mean:

(i) All revenue from End Users recognized by a Service Provider for the provision of any Offering;

(ii) All revenue recognized by a Service Provider by way of sponsorship and commissions as a result of the inclusion of third-party ''in-stream'' or ''in-download'' advertising as part of any Offering, *i.e.,* advertising placed immediately at the start or end of, or during the actual delivery of, a musical work, by way of Eligible Interactive Streaming or Eligible Limited Downloads; and

(iii) All revenue recognized by the Service Provider, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a Relevant Page of the Service Provider or on any page that directly follows a Relevant Page leading up to and including the Eligible Limited Download or Eligible Interactive Stream of a musical work; provided that, in case more than one Offering is available to End Users from a Relevant Page, any advertising revenue shall be allocated between or among the Service Providers on the basis of the relative amounts of the page they occupy.

(2) Service Provider Revenue shall:

(i) Include revenue recognized by the Service Provider, or by any associate, affiliate, agent, or representative of the Service Provider in lieu of its being recognized by the Service Provider; and

(ii) Include the value of any barter or other nonmonetary consideration; and

(iii) Except as expressly detailed in this part, not be subject to any other deduction or set-off other than refunds to End Users for Offerings that the End Users were unable to use because of technical faults in the Offering or other bona fide refunds or credits issued to

End Users in the ordinary course of business.

(3) Service Provider Revenue shall exclude revenue derived by the Service Provider solely in connection with activities other than Offering(s), whereas advertising or sponsorship revenue derived in connection with any Offering(s) shall be treated as provided in paragraphs (2) and (4) of this definition.

(4) For purposes of paragraph (1) of this definition, advertising or sponsorship revenue shall be reduced by the actual cost of obtaining that revenue, not to exceed 15%.

(5) In instances in which a Service Provider provides an Offering to End Users as part of the same transaction with one or more other products or services that are not Licensed Activities, then the revenue from End Users deemed to be recognized by the Service Provider for the Offering for the purpose of paragraph (1) of this definition shall be the lesser of the revenue recognized from End Users for the bundle and the aggregate standalone published prices for End Users for each of the component(s) of the bundle that are Licensed Activities; provided that, if there is no standalone published price for a component of the bundle, then the Service Provider shall use the average standalone published price for End Users for the most closely comparable product or service in the U.S. or, if more than one comparable exists, the average of standalone prices for comparables.

Sound Recording Company means a person or entity that:

(1) Is a copyright owner of a sound recording embodying a musical work;

(2) In the case of a sound recording of a musical work fixed before February 15, 1972, has rights to the sound recording, under chapter 14 of title 17, United States Code, that are equivalent to the rights of a copyright owner of a sound recording of a musical work under title 17, United States Code;

(3) Is an exclusive Licensee of the rights to reproduce and distribute a sound recording of a musical work; or

(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of the Copyright Owner of the sound recording.

* * * * *

§ 385.3 [Amended]

■ 22. In § 385.3, remove the phrase ''after the due date established in 17 U.S.C. 115(c)(5)'' and add in its place ''after the due date established in 17 U.S.C. 115(c)(2)(I) or 115(d)(4)(A)(i), as applicable''.

§ 385.4 [Amended]

■ 23. In § 385.4:

■ a. In paragraph (a), add the term ''Eligible'' before each of the terms ''Interactive Streams'' and ''Limited Downloads''; and

■ b. In paragraph (b), remove the term ''Service'' and add in its place the term ''Service Provider'' each time it appears.

■ 24. Revise the heading for subpart B to read as follows:

Subpart B—Physical Phonorecord Deliveries, Permanent Downloads, Ringtones, and Music Bundles

■ 25. In § 385.11, revise paragraph (a) to read as follows:

§ 385.11 Royalty rates.

(a) *Physical phonorecord deliveries and Permanent Downloads.* For every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord or Permanent Download shall be either 9.1 cents or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

* * * * *

■ 26. Revise the heading for subpart C to read as follows:

Subpart C—Eligible Interactive Streaming, Eligible Limited Downloads, Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Locker Services, and Other Delivery Configurations

■ 27. Revise § 385.20 to read as follows:

§ 385.20 Scope.

This subpart establishes rates and terms of royalty payments for Eligible Interactive Streams and Eligible Limited Downloads of musical works, and other reproductions or distributions of musical works through Limited Offerings, Mixed Service Bundles, Bundled Subscription Offerings, Paid Locker Services, and Purchased Content Locker Services provided through subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115, exclusive of Offerings subject to subpart D of this part.

■ 28. In § 385.21:

■ a. In paragraph (b):

■ i. Remove the term ''Service'' each time it appears and add in its place the term ''Service Provider''; and

■ ii. Remove the term ''Service's'' and add in its place the term ''Service Provider's'';

■ b. In paragraph (b)(4):

■ i. Revise the second sentence; and

■ ii. Remove the phrase ''methodology used by the Service for making royalty payment allocations'' and add in its place ''methodology used for making royalty payment allocations''; and

■ c. In paragraph (d):

■ i. Remove ''of the Licensee'';

■ ii. Remove ''17 U.S.C.115(c)(5)'' and add in its place ''17 U.S.C. 115(c)(2)(I), 17 U.S.C. 115(d)(4)(A)(i),''; and

■ iii. Revise the second sentence.

The revision reads as follows:

§ 385.21 Royalty rates and calculations.

* * * * *

(b) * * *

(4) * * * To determine this amount, the result determined in step 3 in paragraph (b)(3) of this section must be allocated to each musical work used through the Offering. * * *

* * * * *

(d) * * * Without limitation, statements of account shall set forth each step of the calculations with sufficient information to allow the assessment of the accuracy and manner in which the payable royalty pool and per-play allocations (including information sufficient to demonstrate whether and how a royalty floor pursuant to § 385.22 does or does not apply) were determined and, for each Offering reported, also indicate the type of Licensed Activity involved and the number of Plays of each musical work (including an indication of any overtime adjustment applied) that is the basis of the per-work royalty allocation being paid.

§ 385.22 [Amended]

■ 29. In § 385.22:

■ a. In paragraph (a)(1), add the term ''Eligible'' before the term ''Interactive Streams'';

■ b. In paragraph (a)(2), add the term ''Eligible'' before the term ''Interactive Streams'' and add the term ''Eligible'' before the term ''Limited Downloads'' each time it appears; and

■ c. In paragraph (a)(3), add the term ''Eligible'' before the term ''Interactive Streams'' and add the term ''Eligible'' before the term ''Limited Downloads''.

■ 30. Revise § 385.30 to read as follows:

§ 385.30 Scope.

This subpart establishes rates and terms of royalty payments for Promotional Offerings, Free Trial Offerings, and Certain Purchased Content Locker Services provided by subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115.

■ 31. In § 385.31, revise paragraphs (a) through (c) to read as follows:

§ 385.31 Royalty rates.

(a) *Promotional Offerings.* For Promotional Offerings of audio-only Eligible Interactive Streaming and Eligible Limited Downloads of sound recordings embodying musical works that the Sound Recording Company authorizes royalty-free to the Service Provider, the royalty rate is zero.

(b) *Free Trial Offerings.* For Free Trial Offerings for which the Service Provider receives no monetary consideration, the royalty rate is zero.

(c) *Certain Purchased Content Locker Services.* For every Purchased Content Locker Service for which the Service Provider receives no monetary consideration, the royalty rate is zero.

* * * * *

Dated: June 10, 2019.

Jesse M. Feder,

Chief United States Copyright Royalty Judge.

Approved by:

Carla Hayden,

Librarian of Congress.

[FR Doc. 2019–13292 Filed 7–5–19; 8:45 am]

BILLING CODE 1410–72–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. RM2019–3; Order No. 5140]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts final rules that require the Postal Service to provide additional information when it proposes updates to the size and weight limitations applicable to market dominant mail matter.

DATES: *Effective:* August 7, 2019.

ADDRESSES: For additional information, Order No. 5140 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On May 8, 2019, the Commission proposed changes to 39 CFR 3020.111(a) to include the requirement that the Postal Service describe how a proposed update to a size or weight limitation would impact competitors and users of the product(s). The Commission also proposed a requirement that the Postal Service explain how a size and weight limitation change is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code. After consideration of the comments submitted, the Commission adopts final rules.

II. Basis and Purpose of the Final Rule

The Commission initiated this proceeding to evaluate whether changes to Mail Classification Schedule provisions that, in effect, add products to, remove products from, or transfer products between product lists are changes that implicate the requirements of 39 U.S.C. 3642. The Commission sought comments from interested parties on whether it should update its regulations to require information pursuant to section 3642 when changes to the size and weight limitations appear to modify the product lists.

After consideration of the comments submitted, the Commission finds that the amendments to 39 CFR 3020.111(a) strike the appropriate balance between requiring additional information to adequately assess the potential effects of a size and weight limitation change, without being unduly burdensome to the Postal Service. Moreover, the Commission finds that the proposed amendments are sufficient for the Commission to analyze whether a proposed size and weight limitation change would involve unreasonable price increases, unreasonable discrimination, or any other material harm to users and competitors. Although both the Greeting Card Association and the Association for Postal Commerce expressed concern regarding the scope of the rules and possible impacts on volume, both commenters noted that the Commission could address those concerns via proposed sections 3020.111(a)(2) and (3). Accordingly, the Commission adopts the revisions to 39 CFR 3020.111(a).

Final Rules

The Commission amends the rules for updating size and weight limitations in 39 CFR part 3020.

List of Subjects for 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503, 3622, 3631, 3642, 3682.

■ 2. Amend § 3020.111, by revising paragraph (a) to read as follows:

§ 3020.111 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format;

(2) Describe the likely impact that the proposed update will have on users of the product(s) and on competitors; and

(3) Describe how the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

* * * * *

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–14275 Filed 7–5–19; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2018–0733; FRL–9996–11–Region 5]

Air Plan Approval; Indiana; Redesignation of the Terre Haute Area to Attainment of the 2010 Sulfur Dioxide Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Terre Haute, Indiana area from nonattainment to attainment for the 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The area consists of Fayette and Harrison Townships in Vigo County, Indiana. EPA is also approving, as a revision to the Indiana State Implementation Plan (SIP), Indiana's maintenance plan for this area. EPA proposed to approve Indiana's

redesignation request and maintenance plan on May 3, 2019.

DATES: This final rule is effective on July 8, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0733. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Samantha Panock, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8973, *panock.samantha@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

On June 22, 2010 (75 FR 35520), EPA published a revised primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations does not exceed 75 ppb. This NAAQS was codified at 40 CFR 50.4. On July 25, 2013 (78 FR 47191), EPA published its initial air quality designations for the SO_2 NAAQS based upon air quality monitoring data for calendar years 2009–2011. In that action, the Terre Haute area, comprised of Fayette and Harrison Townships, was designated nonattainment for the SO_2 NAAQS.

Indiana was required to submit an attainment demonstration that meets the requirements of sections 172(c) and 191–192 of the CAA and provide for attainment of the SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018, which represents five years after the area was originally designated as nonattainment under the 2010 SO_2 NAAQS. Indiana submitted its attainment demonstration on October 2, 2015. EPA approved the Terre Haute attainment demonstration on March 22, 2019 (84 FR 10692).

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment. The relevant NAAQS must be attained in the area; the applicable implementation plan must be fully approved by EPA under section 110(k); the improvement in air quality must be determined to be due to permanent and enforceable reductions in emissions; the State must meet all applicable requirements for the area under section 110 and part D; and EPA must fully approve a maintenance plan and contingency plan for the area under section 175A of the CAA. On May 3, 2019 (84 FR 19007), EPA proposed to find that these five criteria have been met for the Terre Haute nonattainment area, and thus, EPA proposed to redesignate Terre Haute from nonattainment to attainment of the 2010 SO_2 NAAQS.

II. Public Comments

EPA published its proposed approval of the redesignation request and maintenance plan on May 3, 2019 (84 FR 19007). The public comment period for this proposal closed on June 3, 2019. EPA received one supportive comment.

III. What action is EPA taking?

EPA is redesignating the Terre Haute nonattainment area from nonattainment to attainment of the 2010 SO_2 NAAQS. Indiana has demonstrated that the area is attaining the SO_2 standard, and that the improvement in air quality is due to permanent and enforceable SO_2 emission reductions in the nonattainment area. EPA is also approving, as a revision to the Indiana SIP, Indiana's maintenance plan, which is designed to ensure that the area will continue to maintain the SO_2 standard through the year 2030.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of planning requirements for this SO_2 nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of the geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 20, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770, the table in paragraph (e) is amended by adding an entry for ''Terre Haute 2010 Sulfur Dioxide (SO_2) maintenance plan'' after the entry ''Terre Haute Hydrocarbon Control Strategy'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Terre Haute 2010 Sulfur Dioxide (SO_2) maintenance plan.	.....	7/8/2019, [insert **Federal Register** citation].	
*	*	*	*

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. Section 81.315 is amended by revising the entry ''Terre Haute, IN'' in the table entitled ''Indiana—2010 Sulfur Dioxide NAAQS (Primary)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area [1] [3]	Designation	
	Date [2]	Type

INDIANA—2010 SULFUR DIOXIDE NAAQS—Continued

[Primary]

Designated area [1] [3]	Designation	
	Date [2]	Type
* * * * * * *		
Terre Haute, IN Vigo County. Fayette Township, Harrison Township.	7/8/2019	Attainment.
* * * * * * *		

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.
[2] This date is April 9, 2018, unless otherwise noted.
[3] Porter County will be designated by December 31, 2020.

* * * * *

[FR Doc. 2019–14359 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0096; FRL–9995–17]

Acetic Acid Ethenyl Ester, Polymer With Ethene and Ethenol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethene and ethenol; when used as an inert ingredient in a pesticide chemical formulation. Keller and Heckman LLP. on behalf of Kuraray American, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acetic acid ethenyl ester, polymer with ethene and ethenol on food or feed commodities.

DATES: This regulation is effective July 8, 2019. Objections and requests for hearings must be received on or before September 6, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0096, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0096 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 6, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0096, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/

DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of May 13, 2019 (84 FR 20843) (FRL–9991–91), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11251) filed by Keller and Heckman LLP. on behalf of Kuraray America, INC., 1001 G Street NW—Suite 500 West, Washington, DC 20001. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethene and ethenol (CAS Reg. No. 26221–27–2). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). acetic acid ethenyl ester, polymer with ethene and ethenol conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as listed in 40 CFR 723.250(d)(6). Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

The polymer's number average MW of 20,000 daltons is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, acetic acid ethenyl ester, polymer with ethene and ethenol meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to acetic acid ethenyl ester, polymer with ethene and ethenol.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that acetic acid ethenyl ester, polymer with ethene and ethenol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of acetic acid ethenyl ester, polymer with ethene and ethenol is 20,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since acetic acid ethenyl ester, polymer with ethene and ethenol conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found acetic acid ethenyl ester, polymer with ethene and ethenol to share a common mechanism of

toxicity with any other substances, and acetic acid ethenyl ester, polymer with ethene and ethenol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acetic acid ethenyl ester, polymer with ethene and ethenol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of acetic acid ethenyl ester, polymer with ethene and ethenol, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of acetic acid ethenyl ester, polymer with ethene and ethenol.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for acetic acid ethenyl ester, polymer with ethene and ethenol.

IX. Conclusion

Accordingly, EPA finds that exempting residues of acetic acid ethenyl ester, polymer with ethene and ethenol from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 2019.

Donna Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, alphabetically add the polymer to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Acetic acid ethenyl ester, polymer with ethene and ethenol, minimum number average molecular weight (in amu), 20,000	26221–27–2
* * * * * * *	

[FR Doc. 2019–14396 Filed 7–5–19; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2018–0165]

RIN 2126–AC01

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends its Hazardous Materials Safety Permit regulations to incorporate by reference the April 1, 2018, edition of the Commercial Vehicle Safety Alliance's (CVSA) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA's State partners.

DATES: This final rule is effective July 8, 2019. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of July 8, 2019.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than August 7, 2019.

ADDRESSES: Petitions for reconsideration must be written in English and mailed or delivered to: Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or by telephone at 202–366–9209. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2018–0165 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Executive Summary

This rulemaking updates an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b). Section 385.4(b) currently references the April 1, 2016, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' The Out-of-Service Criteria, while not regulations, provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA's State partners. In this final rule, FMCSA incorporates by reference the April 1, 2018, edition, which includes changes adopted in the April 1, 2017 edition.

III. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations to address the congressional mandate on hazardous materials. Those regulations on hazardous materials are the underlying provisions to which the material incorporated by reference discussed in this final rule is applicable.

IV. Background

In 1986, the U.S. Department of Energy (DOE) and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' As of January 1, 2005, all vehicles and carriers transporting highway route controlled

quantities of radioactive material are regulated by the U.S. Department of Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the U.S. All highway route controlled quantities of radioactive material shipments entering the U.S. must also pass the North American Standard Level VI Inspection either at the shipment's point of origin or when the shipment enters the U.S.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b)(1) requires that motor carriers must ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' It is necessary to update the reference to ensure that motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria that are referenced in the rules. Copies of the reference are available to the public from CVSA either through its website, or by contacting CVSA at the address, and phone number provided, and from additional sources of information associated with future incorporations by reference.

According to 2012–2017 data from FMCSA's Motor Carrier Management Information System (MCMIS), approximately 3.5 million Level I–Level VI roadside inspections were performed annually. Nearly 97 percent of these were Level I,[1] Level II,[2] and Level III[3] inspections. During the same period, an average of 842 Level VI inspections were performed annually, comprising only 0.024 percent of all roadside inspections. On average, out-of-service violations were cited in only 10 Level VI inspections annually (1.19 percent), whereas on average, out-of-service violations were cited in 269,024 Level I inspections (25.3 percent), 266,122 Level II inspections (22.2 percent), and 66,489 Level III inspections (6.2 percent) annually. Based on these statistics, CMVs transporting transuranics and highway route controlled quantities of radioactive materials are clearly among the best maintained and safest CMVs on the highways today, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

[1] Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

[2] Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

[3] Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

V. Notice of Proposed Rulemaking

FMCSA published a notice of proposed rulemaking (NPRM) on December 31, 2018 (83 FR 67705). Whereas the incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b) references the April 1, 2016, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' the NPRM proposed to incorporate by reference the April 1, 2018, edition, which also captures changes adopted in the April 1, 2017 edition. Cumulatively, 15 updates distinguish the April 1, 2018, edition from the 2016 edition. Each of the changes was described and discussed in detail in the NPRM. Generally, the changes serve to clarify or provide additional guidance to inspectors regarding uniform implementation and application of the out-of-service criteria, and none is expected to affect the number of out-of-service violations cited during Level VI inspections. The incorporation by reference of the 2018 edition did not change what constitutes a violation of FMCSA regulations.

VI. Discussion of Comments Received on the Proposed Rule

FMCSA received one comment to the NPRM. The Commercial Vehicle Safety Alliance (CVSA) commended FMCSA for publishing the NPRM, and encouraged FMCSA to finalize the rule and update the incorporation by reference because ''the current reference of the April 1, 2016 edition is outdated and does not reflect the most up to date standard.'' In addition, CVSA noted that the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403'' is updated annually, and encouraged FMCSA to take the necessary action to update the regulations accordingly at that time.

VII. Section-by-Section Analysis

FMCSA revises §§ 385.4 (a) and 385.415 (b) to conform to formatting requirements of the Office of the Federal Register; to update the reference in § 385.4(b) from the April 1, 2016, edition to the April 1, 2018, edition of the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403;'' and to clarify that copies are available to the public from CVSA either through its website, or by contacting CVSA at the address, and phone number provided, and from additional sources of information associated with future incorporations by reference.

VIII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

The CVSA is an organization representing Federal, State and Provincial motor carrier safety enforcement agencies in United States, Canada and Mexico. The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections conducted in all three countries.

IX. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it

under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6 dated Dec. 20, 2018).

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply to this action because it is a nonsignificant regulatory action, as defined in section 3(f) of E.O. 12866, and has zero costs; therefore, it is not subject to the ''2 for 1'' and budgeting requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), Public Law 96–354, 94 Stat. 864 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.[4] In compliance with the RFA, FMCSA evaluated the effects of the proposed rule on small entities. The rule incorporates by reference the April 1, 2018, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to ''prepare and make available an initial regulatory flexibility analysis'' that will describe the impact of the proposed rule on small entities (5 U.S.C 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the final rule is not expected to impact a substantial number of small entities. The final rule is largely editorial and provides guidance to inspectors and motor carriers transporting transuranics in interstate commerce. Accordingly, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult the FMCSA point of contact, Michael Huntley, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.[5]

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $161 million (which is the value equivalent to $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any one year. This final rule will not result in such an expenditure.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b) (2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII).

[4] 5 U.S.C. 601.

[5] U.S. Department of Transportation (DOT). ''The Rights of Small Entities to Enforcement Fairness and Policy Against Retaliation.'' Available at: *https://www.transportation.gov/sites/dot.gov/files/docs/SBREFAnotice2.pdf* (accessed April 20, 2018).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107–347, section 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Therefore, FMCSA has not conducted a PIA.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

This final rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. FMCSA does not intend to adopt its own technical standard, thus there is no need to submit a separate statement to OMB on this matter. The standard being incorporated in this final rule is discussed in greater detail in sections IV, V and VII above, and is reasonably available at FMCSA and through the CVSA website.

P. Environment (NEPA)

FMCSA analyzed this rule consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(b). The Categorical Exclusion (CE) in paragraph 6.t.(2) includes regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986. The content in this rule is covered by this CE, there are no extraordinary circumstances present, and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *Regulations.gov* website listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, part 385, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151 and 31502; Sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; and 49 CFR 1.87.

■ 2. Revise § 385.4 to read as follows:

§ 385.4 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FMCSA must publish notification of the change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590; Attention: Chief, Compliance Division at (202) 366–1812, and is available from the sources listed in paragraph (b) of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, telephone (301) 830–6143, *www.cvsa.org.*

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' April 1, 2018, incorporation by reference approved for § 385.415(b).

(2) [Reserved]

■ 3. In § 385.415, remove paragraph (b)(2), redesignate paragraph (b)(1) as paragraph (b), and add a heading for newly redesignated paragraph (b) to read as follows:

§ 385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

* * * * *

(b) *Inspection of vehicle transporting Class 7 (radioactive) materials.* * * *

* * * * *

Issued under authority delegated in 49 CFR 1.87 on June 27, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–14226 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 84, No. 130
Monday, July 8, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 70, 72, 74, and 150

[NRC–2009–0096]

RIN 3150–AI61

Amendments to Material Control and Accounting Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking activity.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing a rulemaking activity that would have consolidated and revised the material control and accounting requirements for special nuclear material. The purpose of this action is to inform members of the public of the discontinuation of the rulemaking activity and to provide a brief discussion of the NRC's decision. The rulemaking activity will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: As of July 8, 2019, the rulemaking activity discussed in this document is discontinued.

ADDRESSES: Please refer to Docket ID NRC–2009–0096 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–5795, email: *Thomas.Young@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC ensures that its licensees control and account for special nuclear material (SNM) through the provisions that are currently in part 74 and several sections of part 72 of title 10 of the *Code of Federal Regulations* (10 CFR). These material control and accounting (MC&A) regulations are intended to ensure that the information about SNM is accurate, authentic, and sufficiently detailed to enable a licensee to maintain current knowledge of its SNM and manage its program for securing and protecting SNM from any loss, theft, diversion, or misuse. The requirements for MC&A, together with those for physical protection of facilities and information security, make up the primary elements of the NRC's SNM safeguards program. The MC&A component of the larger SNM safeguards program helps ensure that SNM is not stolen or otherwise diverted from the facility and supports the NRC's strategic goal of ensuring the secure use of radioactive materials.

Following the events of September 11, 2001, the NRC completed a comprehensive review of its safeguards and security programs, including MC&A requirements. Physical protection and MC&A programs complement each other in the safeguarding of nuclear materials. In SECY–08–0059, ''Rulemaking Plan: Part 74—Material Control and Accounting of Special Nuclear Material,'' dated April 25, 2008 (ADAMS Accession No. ML080580307), the NRC staff provided the Commission with a range of options for amending the MC&A regulations to provide a more risk-informed regulatory framework commensurate with the post-September 11, 2001, threat environment.

In the staff requirements memorandum (SRM) for SECY–08–0059, dated February 5, 2009 (ADAMS Accession No. ML090360473), the Commission approved Option 4 of the rulemaking plan, which directed the NRC staff to revise and consolidate the existing MC&A requirements into 10 CFR part 74 in order to update, clarify, and strengthen the regulations.

II. Discussion

On November 8, 2013, the NRC published a proposed rule and draft regulatory guidance documents in the **Federal Register** for public comment (78 FR 67225; 78 FR 67224, respectively). The proposed rule would have added new requirements for NRC licensees authorized to possess SNM in a quantity greater than 350 grams. Most of the proposed rule requirements would have clarified existing language and consolidated MC&A requirements into 10 CFR part 74. Other proposed rule requirements were intended to strengthen specific sections of the requirements for some types of facilities by providing: General performance objectives; item control system requirements; the use of tamper-safing procedures; and the designation of material balance areas, item control areas, and material custodians. The proposed rule would have applied, to different extents, to facilities licensed under 10 CFR parts 50, 52, 70, and 72.

The NRC received 27 comment submissions from members of the nuclear industry, Agreement State organizations, and private citizens. Regarding the proposed rule, several commenters expressed concerns that meeting the general performance objectives would require extensive changes to existing MC&A programs and that the general performance objectives were in some cases too restrictive. Commenters also spoke to the proposed removal of some thresholds and exemptions in the item control system requirements and their perception that

requirements for tamper-safing and for material balance areas and item control areas were too far-reaching. In addition, several commenters requested that the NRC prepare a more complete regulatory analysis and a backfit analysis. Several commenters provided input to improve the clarity and utility of the draft associated regulatory guidance documents.

In response to the public comments, the NRC issued a revised regulatory analysis (ADAMS Accession No. ML18061A055) and a backfit evaluation (ADAMS Accession No. ML18061A058). A full list of comments received, and the NRC's responses, is available in ADAMS under Accession No. ML18061A050.

In SECY–18–0104, ''Draft Final Rule: Amendments to Material Control and Accounting Regulations (RIN 3150–Al61; NRC–2009–0096),'' dated October 15, 2018 (ADAMS Accession No. ML18061A056), the staff requested Commission approval to publish the final rule in the **Federal Register**. The final rule would have included revisions made to the proposed rule in response to public comments and revisions to the six draft associated regulatory guidance documents to reflect and explain the revised MC&A requirements in 10 CFR part 74.

In SRM–SECY–18–0104, dated April 3, 2019 (ADAMS Accession No. ML19093B393), the Commission disapproved the draft final rule and directed the staff to discontinue this rulemaking activity.

III. Conclusion

The NRC is discontinuing this rulemaking activity for the reasons discussed in this document. In the next edition of the Unified Agenda, the NRC will update the entry for this rulemaking activity and reference this document to indicate that the rulemaking activity is no longer being pursued. This rulemaking activity will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions. If the NRC decides to pursue similar or related rulemaking activities in the future, it will inform the public through new rulemaking entries in the Unified Agenda.

Dated at Rockville, Maryland, this 2nd day of July 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Acting Secretary of the Commission.

[FR Doc. 2019–14478 Filed 7–5–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2018–BT–STD–0003]

RIN 1904–AE42

Energy Conservation Program: Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability and request for information.

SUMMARY: The U.S. Department of Energy (DOE) is publishing an analysis of the energy savings potential of amended industry consensus standards for certain classes of variable refrigerant flow multi-split air conditioners and heat pumps (VRFs), which are a type of commercial and industrial equipment. The Energy Policy and Conservation Act of 1975, as amended (EPCA), requires DOE to evaluate and assess whether there is a need to update its energy conservation standards following changes to the relevant industry consensus standards in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1 (ASHRAE Standard 90.1), Additionally under EPCA, DOE must review its standards for this equipment at least once every six years and publish either a notice of proposed rulemaking (NOPR) to propose new standards for VRFs or a notice of determination that the existing standards do not need to be amended. Accordingly, DOE is also initiating an effort to determine whether to amend the current energy conservation standards for classes of VRFs for which DOE has tentatively determined that the ASHRAE Standard 90.1 levels have not been updated to be more stringent than the current Federal standards. This document solicits information from the public to help DOE determine whether amended standards for VRFs would result in significant energy savings and whether such standards would be technologically feasible and economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this document), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before August 22, 2019.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2018–BT–STD–0003, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: CommACHeating EquipCat2017STD0017@ee.doe.gov.* Include the docket number EERE–2018–BT–STD–0003 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Energy Conservation Standards NODA and RFI for Certain Categories of Commercial Air-Conditioning and Heating Equipment, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document (Public Participation).

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov* (search EERE–2018–BT–STD–0003). All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section IV of this document, Public Participation, for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Authority

The Energy Policy and Conservation Act of 1975, as amended (''EPCA''; 42 U.S.C. 6291 *et seq.*),[1] established the Energy Conservation Program for Consumer Products Other Than Automobiles. Title III, Part C[2] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment, which includes variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems),[3] the subject of this document. (42 U.S.C. 6311(1)(B)-(D))

Pursuant to EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6316(b)(2)(D).

In EPCA, Congress initially set mandatory energy conservation standards for certain types of commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. *Id.* In doing so, EPCA established Federal energy conservation standards at levels that generally corresponded to the levels in American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989), for each type of covered equipment listed in 42 U.S.C. 6313(a).

In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation standard for each type of equipment listed, each time ASHRAE amends Standard 90.1 with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) When triggered in this manner, DOE must undertake and publish an analysis of the energy savings potential of amended energy efficiency standards, and amend the Federal standards to establish a uniform national standard at the minimum level specified in the amended ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that a more-stringent standard level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE decides to adopt as a national standard the minimum efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines, supported by clear and convincing evidence, that a more-stringent uniform national standard would result in significant additional conservation of energy and is technologically feasible and economically justified, then DOE must establish such more-stringent uniform national standard not later than 30 months after publication of the amended ASHRAE Standard 90.1.[4] (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (B))

Although EPCA does not explicitly define the term ''amended'' in the context of what type of revision to ASHRAE Standard 90.1 would trigger

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] Air-cooled, single-phase VRF multi-split air conditioners and heat pumps with cooling capacity less than 65,000 Btu/h are considered residential central air conditioners and heat pumps and are regulated under the energy conservation program for consumer products. 10 CFR part 430, subpart B, appendices M and M1 and 10 CFR part 430, subpart C.

[4] In determining whether a more-stringent standard is economically justified, EPCA directs DOE to determine, after receiving views and comments from the public, whether the benefits of the proposed standard exceed the burdens of the proposed standard by, to the maximum extent practicable, considering the following:

(1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost or maintenance expense;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)).

DOE's obligation, DOE's longstanding interpretation has been that the statutory trigger is an amendment to the standard applicable to that equipment under ASHRAE Standard 90.1 that increases the energy efficiency level for that equipment. *See* 72 FR 10038, 10042 (March 7, 2007). In other words, if the revised ASHRAE Standard 90.1 leaves the energy efficiency level unchanged (or lowers the energy efficiency level), as compared to the energy efficiency level specified by the uniform national standard adopted pursuant to EPCA, regardless of the other amendments made to the ASHRAE Standard 90.1 requirement (*e.g.,* the inclusion of an additional metric), DOE has stated that it does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). *See* 74 FR 36312, 36313 (July 22, 2009) and 77 FR 28928, 28937 (May 16, 2012). However, DOE notes that Congress adopted amendments to these provisions related to ASHRAE Standard 90.1 equipment under the American Energy Manufacturing Technical Corrections Act (Pub. L. 112–210 (Dec. 18, 2012); ''AEMTCA''). In relevant part, DOE is prompted to act whenever ASHRAE Standard 90.1 is amended with respect to ''the standard levels or design requirements applicable under that standard'' to any of the enumerated types of commercial air conditioning, heating, or water heating equipment. (42 U.S.C. 6313(a)(6)(A)(i))

EPCA does not detail the exact type of amendment that serves as a triggering event. However, DOE has considered whether its obligation is triggered in the context of whether the specific ASHRAE Standard 90.1 requirement on which the most current Federal requirement is based is amended (*i.e.,* the regulatory metric). For example, if an amendment to ASHRAE Standard 90.1 changed the metric for the standard on which the Federal requirement was based, DOE would perform a crosswalk analysis to determine whether the amended metric under ASHRAE Standard 90.1 resulted in an energy efficiency level that was more stringent than the current DOE standard. Conversely, if an amendment to ASHRAE Standard 90.1 were to add an additional metric by which a class of equipment is to be evaluated, but did not amend the requirement that is in terms of the metric on which the Federal requirement was based, DOE would not consider its obligation triggered.[5]

In addition, DOE has explained that its authority to adopt an ASHRAE amendment is limited based on the definition of ''energy conservation standard.'' 74 FR 36312, 36322 (July 22, 2009). In general, an ''energy conservation standard'' is limited, per the statutory definition, to either a performance standard *or* a design requirement. (42 U.S.C. 6311(18)) Informed by the ''energy conservation standard'' definition, DOE has stated that adoption of an amendment to ASHRAE Standard 90.1 ''that establishes both a performance standard and a design requirement is beyond the scope of DOE's legal authority, as would be a standard that included more than one design requirement.'' 74 FR 36312, 36322 (July 22, 2009).

As noted, the ASHRAE Standard 90.1 provision in EPCA acknowledges technological changes that yield energy efficiency benefits, as well as continuing development of industry standards and test methods. Amendments to a uniform national standard provide Federal requirements that continue to reflect energy efficiency improvements identified by industry. Amendments to a uniform national standard that reflect the relevant amended versions of ASHRAE Standard 90.1 would also help reduce compliance and test burdens on manufacturers by harmonizing the Federal requirements, when appropriate, with industry best practices. This harmonization would be further facilitated by establishing not only consistent energy efficiency levels and design requirements between ASHRAE Standard 90.1 and the Federal requirements, but comparable metrics as well.

As stated previously, DOE has limited its review under the ASHRAE Standard 90.1 provisions in EPCA to the equipment class that was subject to the ASHRAE Standard 90.1 amendment. DOE has stated that if ASHRAE has not amended a standard for an equipment class subject to 42 U.S.C. 6313, there is no change that would require action by DOE to consider amending the uniform national standard to maintain consistency with ASHRAE Standard 90.1. See, 72 FR 10038, 10042 (March 7, 2007); 77 FR 36312, 36320–36321 (July 22, 2009); 80 FR 42614, 42617 (July 17, 2015).

In those situations where ASHRAE has not acted to amend the levels in Standard 90.1 for the equipment types enumerated in the statute, EPCA also provides for a 6-year-lookback to consider the potential for amending the uniform national standards. (42 U.S.C. 6313(a)(6)(C)) Specifically, pursuant to the amendments to EPCA under AEMTCA, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 ''every 6 years'' to determine whether the applicable energy conservation standards need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) DOE must publish either a notice of proposed rulemaking (NOPR) to propose amended standards or a notice of determination that existing standards do not need to be amended. (42 U.S.C. 6313(a)(6)(C)) In proposing new standards under the 6-year review, DOE must undertake the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II)) This is a separate statutory review obligation, as differentiated from the obligation triggered by an ASHRAE Standard 90.1 amendment. While the statute continues to defer to ASHRAE's lead on covered equipment subject to Standard 90.1, it does allow for a comprehensive review of all such equipment and the potential for adopting more-stringent standards, where supported by the requisite clear and convincing evidence. That is, DOE interprets ASHRAE's not amending Standard 90.1 with respect to a product or equipment type as ASHRAE's determination that the standard applicable to that product or equipment type is already at an appropriate level of stringency, and DOE will not amend that standard unless there is clear and convincing evidence that a more-stringent level is justified.

As a preliminary step in the process of reviewing the changes to ASHRAE Standard 90.1, EPCA directs DOE to publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended standards within 180 days after ASHRAE Standard 90.1 is amended with respect to any of the covered equipment specified under 42 U.S.C. 6313(a). (42 U.S.C. 6313(a)(6)(A))

On October 26, 2016, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2016. This action by ASHRAE triggered DOE's obligations under 42 U.S.C. 6313(a)(6), as outlined previously. This notice of data availability (NODA)

[5] See the May 16, 2012, final rule for small, large, and very large water-cooled and evaporatively-cooled commercial package air conditioners, and VRF water-source heat pumps with cooling capacity less than 17,000 Btu/h, in which DOE states that ''if the revised ASHRAE Standard 90.1 leaves the standard level unchanged or lowers the standard, *as compared to the level specified by the national standard adopted pursuant to EPCA,* DOE does not have the authority to conduct a rulemaking to consider a higher standard for that equipment pursuant to 42 U.S.C. 6313(a)(6)(A). 77 FR 28928, 28929 (emphasis added). See also, 74 FR 36312, 36313 (July 22, 2009).

presents the analysis of the energy savings potential of amended energy efficiency standards, as required under 42 U.S.C. 6313(a)(6)(A)(i). DOE is also taking this opportunity to collect data and information regarding other VRF equipment classes for which it was not triggered but for which DOE plans to conduct a concurrent 6-year-lookback review. (42 U.S.C. 6313(a)(6)(C)) Such information will help DOE inform its decisions, consistent with its obligations under EPCA.

B. Purpose of the Notice of Data Availability

As explained previously, DOE is publishing this NODA as a preliminary step pursuant to EPCA's requirements for DOE to consider amended standards for certain categories of commercial equipment covered by ASHRAE Standard 90.1, whenever ASHRAE amends its standard to increase the energy efficiency level for an equipment class within a given equipment category. Specifically, this NODA presents for public comment DOE's analysis of the potential energy savings for amended national energy conservation standards for VRF multi split systems based on: (1) The amended efficiency levels contained within ASHRAE Standard 90.1–2016, and (2) more-stringent efficiency levels. DOE describes these analyses and preliminary conclusions and seeks input from interested parties, including the submission of data and other relevant information. DOE is also taking the opportunity to consider the potential for more-stringent standards for the other equipment classes of the subject equipment category (*i.e.,* where DOE was not triggered) under EPCA's 6-year-lookback authority.

DOE carefully examined the changes for equipment in ASHRAE Standard 90.1 in order to thoroughly evaluate the amendments in ASHRAE 90.1–2016, thereby permitting DOE to determine what action, if any, is required under its statutory mandate. DOE also will carefully examine the energy savings potential for other equipment classes where it was not triggered, so as to conduct a thorough review for an entire equipment category. Section II of this NODA contains that evaluation, and section III of this NODA discusses the possibility of more-stringent standards for those equipment classes where DOE was not triggered by ASHRAE action.

In summary, the energy savings analysis presented in this NODA is a preliminary step required under 42 U.S.C. 6313(a)(6)(A)(i). DOE is also treating it as an opportunity to gather information regarding its obligations under 42 U.S.C. 6313(a)(6)(C). After review of the public comments on this NODA, if DOE determines that the amended efficiency levels in ASHRAE Standard 90.1–2016 increase the energy efficiency level for an equipment class within a given equipment category currently covered by uniform national standards, DOE will commence a rulemaking to amend standards based upon the efficiency levels in ASHRAE Standard 90.1–2016 or, where supported by clear and convincing evidence, consider more-stringent efficiency levels that would be expected to result in significant additional conservation of energy and are technologically feasible and economically justified. If DOE determines it appropriate to conduct a rulemaking to establish more-stringent efficiency levels under the statute, DOE will address the general rulemaking requirements applicable under 42 U.S.C. 6313(a)(6)(B), such as the anti-backsliding provision,[6] the criteria for making a determination of economic justification as to whether the benefits of the proposed standard exceed the burden of the proposed standard,[7] and the prohibition on making unavailable existing products with performance characteristics generally available in the United States.[8]

[6] The anti-backsliding provision mandates that the Secretary may not prescribe any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313 (a)(6)(B)(iii)(I))

[7] In deciding whether a potential standard's benefits outweigh its burdens, DOE must consider to the maximum extent practicable, the following seven factors:

(1) The economic impact on manufacturers and consumers of the product subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the product in the type (or class), compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of product utility or performance of the product likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

[8] The Secretary may not prescribe an amended standard if interested persons have established by a preponderance of evidence that the amended standard would likely result in unavailability in the U.S. of any covered product type (or class) of performance characteristics (including reliability, features, capacities, sizes, and volumes) that are substantially the same as those generally available in the U.S. at the time of the Secretary's finding. (42 U.S.C. 6313(a)(6)(B)(iii)(II))

C. Rulemaking Background

DOE's energy conservation standards for VRF multi-split systems are codified at 10 CFR 431.97. DOE defines ''variable refrigerant flow multi-split air conditioner'' as a unit of commercial package air-conditioning and heating equipment that is configured as a split system air conditioner incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92. DOE defines ''variable refrigerant flow multi-split heat pump'' similarly, but with the addition that it uses reverse cycle refrigeration as its primary heating source and that it may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. *Id.*

DOE's regulations include test procedures and energy conservation standards that apply to air-cooled VRF multi-split air conditioners, air-cooled VRF multi-split heat pumps, and water-source VRF multi-split heat pumps, with cooling capacity less than 760,000 Btu/h, except air-cooled, single-phase VRF multi-split air conditioners and heat pumps with cooling capacity less than 65,000 Btu/h.[9] 10 CFR 431.96 and 10 CFR 431.97. The energy conservation standards for VRF multi-split systems were most recently amended through the final rule for energy conservation standards and test procedures for certain commercial equipment published on May 16, 2012 (''May 2012 final rule''). 77 FR 28928. The May 2012 final rule established separate equipment classes for VRF multi-split systems and adopted energy conservation standards that generally correspond to the levels in the 2010 revision of ASHRAE Standard 90.1 for most of the equipment classes. 77 FR 28928, 28995 (May 16, 2012).

DOE's test procedure for VRF multi-split systems is codified at 10 CFR

[9] Air-cooled, single-phase VRF multi-split air conditioners and heat pumps with cooling capacity less than 65,000 Btu/h are considered residential central air conditioners and heat pumps and are regulated under the energy conservation program for consumer products. 10 CFR part 430, subpart B, appendices M and M1 and 10 CFR part 430, subpart C.

431.96 and was established in the May 2012 final rule. 77 FR 28928, 28990–28991 (May 16, 2012). DOE's current regulations require that manufacturers test VRF multi-split systems using American National Standards Institute (ANSI)/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 1230–2010 with Addendum 1, *Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment* (AHRI 1230–2010), except for sections 5.1.2 and 6.6. DOE's current test procedure also requires that manufacturers adhere to additional requirements listed in 10 CFR 431.96(c)–(f) pertaining to compressor break-in period and equipment set-up for testing, including requirements for refrigerant charging, refrigerant line length, air flow rate, and compressor speed, when measuring the energy efficiency ratio (EER) and coefficient of performance (COP) for air-cooled VRF multi-split systems with a cooling capacity between 65,000 Btu/h and 760,000 Btu/h and water-source VRF multi-split systems with a cooling capacity less than 760,000 Btu/h, and when measuring the seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) for three-phase air-cooled VRF multi-split systems with a cooling capacity less than 65,000 Btu/h, and when certifying that equipment is compliant with the applicable standard.

On May 27, 2015, the ASHRAE Standards Committee approved Addendum n to ASHRAE Standard 90.1–2013, which raised the minimum integrated energy efficiency ratio (IEER [10]) for air-cooled VRF multi-split systems, effective January 1, 2017. Subsequently, ASHRAE proposed Addendum bs to ASHRAE Standard 90.1–2013, which would raise the minimum IEER and the minimum COP for water-source VRF multi-split systems, effective January 1, 2018. Both of these addenda are incorporated into ASHRAE Standard 90.1–2016. However, at the current time, the Federal energy conservation standards applicable to VRFs do not use IEER as their regulatory metric.

On October 26, 2016, ASHRAE officially released for distribution and made public ASHRAE Standard 90.1–2016. ASHRAE Standard 90.1–2016 revised the efficiency levels for certain commercial equipment, including certain classes of VRF multi-split systems (as discussed in the following section).[11] For the remaining equipment, ASHRAE left in place the preexisting levels (*i.e.,* the efficiency levels specified in EPCA or the efficiency levels in ASHRAE Standard 90.1–2013). ASHRAE Standard 90.1–2016 did not change any of the design requirements for the commercial heating, air conditioning, and water-heating equipment covered by EPCA.

On April 11, 2018, DOE published in the **Federal Register** a notice of its intent to establish a negotiated rulemaking working group (Working Group) under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), in accordance with the Federal Advisory Committee Act (FACA [12]) and the Negotiated Rulemaking Act (NRA [13]), to negotiate proposed test procedures and amended energy conservation standards for VRF multi-split systems. 83 FR 15514. The purpose of the Working Group is to discuss and, if possible, reach consensus on a proposed rule regarding test procedures and energy conservation standards for VRF multi-split systems, as authorized by EPCA. 83 FR 15514 (April 11, 2018). DOE explained that the primary reason for using the negotiated rulemaking process for this equipment is that stakeholders strongly support a consensual rulemaking effort and that such a regulatory negotiation process will be less adversarial and better suited to resolving complex technical issues. 83 FR 15514 (April 11, 2018). DOE further stated that an important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect congressional intent. 83 FR 15514 (April 11, 2018). The Working Group has held a number of meetings. Public meeting dates and information are located on the Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps rulemaking web page [14] and all related notices, public comments, public meeting transcripts, and supporting documents are available in the associated docket.[15]

II. Discussion of Changes in ASHRAE Standard 90.1–2016

A. Amendments to VRF Multi-Split System Standards in ASHRAE Standard 90.1–2016

As noted, ASHRAE Standard 90.1–2016 revised the efficiency levels for certain commercial equipment, but for the remaining equipment, ASHRAE left in place the preexisting levels. DOE has determined that ASHRAE 90.1–2016 increased the efficiency level for six of the 20 DOE VRF multi-split system equipment classes. Table II.I shows the VRF multi-split system equipment classes provided in ASHRAE Standard 90.1–2016 and the corresponding efficiency levels in ASHRAE Standard 90.1–2013 and in ASHRAE Standard 90.1–2016. Table II.I also displays the existing Federal energy conservation standards for those equipment classes and indicates whether the update in ASHRAE Standard 90.1–2016 triggers DOE evaluation as required under EPCA (*i.e.,* whether the update results in a standard level more stringent than the current Federal level). (As discussed in the following paragraphs, DOE's standards disaggregate VRF multi-split systems into 20 equipment classes, whereas ASHRAE Standard 90.1 has 22 classes.) The remainder of this section assesses each of these equipment classes and describes whether the amendments in ASHRAE Standard 90.1–2016 constitute increased energy efficiency levels, which would necessitate further analysis of the potential energy savings from corresponding amendments to the Federal energy conservation standards. The conclusions of this assessment are presented in the last column of Table II.I of this document.

[10] Integrated energy efficiency ratio (IEER) factors in the efficiency of operating at part-load conditions of 75-percent, 50-percent, and 25-percent of capacity, as well as the efficiency at full-load. The IEER metric is intended to provide a more representative measure of cooling season energy consumption in actual operation using a weighted average of EER values determined for the four test points.

[11] ASHRAE Standard 90.1–2016 also revised standards for certain classes of computer room air conditioners (CRACs) and established new standards for dedicated outdoor air systems (DOASes). DOE is addressing CRACs and DOASes in a separate document.

[12] 5 U.S.C. App. 2, Public Law 92–463.

[13] 5 U.S.C. 561–570, Public Law 104–320.

[14] Available at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=71&action=viewlive.*

[15] Available at: *https://www.regulations.gov/docket?D=EERE-2018-BT-STD-0003.*

TABLE II.I—FEDERAL ENERGY CONSERVATION STANDARDS AND ENERGY EFFICIENCY LEVELS IN ASHRAE STANDARD 90.1–2016 AND THE CORRESPONDING LEVELS IN ASHRAE STANDARD 90.1–2013 FOR VRF MULTI-SPLIT SYSTEMS [1]

Considered equipment class [2]	Energy efficiency levels in ASHRAE Standard 90.1–2013 (as corrected) [3]	Energy efficiency levels in ASHRAE Standard 90.1–2016	Federal energy conservation standards	DOE Triggered by ASHRAE Standard 90.1–2016 Amendment?
VRF Air Conditioners, Air-cooled, <65,000 Btu/h	13.0 SEER	13.0 SEER	13.0 SEER	No.
VRF Air Conditioners, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, No Heating or Electric Resistance Heating.	11.2 EER, 13.1 IEER	11.2 EER, 15.5 IEER	11.2 EER	No.
VRF Air Conditioners, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, All Other Types of Heating [4].	No standard	No standard	11.0 EER	No.
VRF Air Conditioners, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, No Heating or Electric Resistance Heating.	11.0 EER, 12.9 IEER	11.0 EER, 14.9 IEER	11.0 EER	No.
VRF Air Conditioners, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, All Other Types of Heating [4].	No standard	No standard	10.8 EER	No.
VRF Air Conditioners, Air-cooled, ≥240,000 Btu/h and <760,000 Btu/h, No Heating or Electric Resistance Heating.	10.0 EER, 11.6 IEER	10.0 EER, 13.9 IEER	10.0 EER	No.
VRF Air Conditioners, Air-cooled, ≥240,000 Btu/h and <760,000 Btu/h, All Other Types of Heating [4].	No standard	No standard	9.8 EER	No.
VRF Heat Pumps, Air-cooled, <65,000 Btu/h	13.0 SEER, 7.7 HSPF	13.0 SEER, 7.7 HSPF	13.0 SEER, 7.7 HSPF	No.
VRF Heat Pumps, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, No Heating or Electric Resistance Heating [5].	11.0 EER, 12.9 IEER, 3.3 COP_H.	11.0 EER, 14.6 IEER, 3.3 COP_H.	11.0 EER, 3.3 COP	No.
VRF Heat Pumps, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, All Other Types of Heating [4 5].	10.8 EER, 12.7 IEER; 3.3 COP_H.	10.8 EER, 14.4 IEER; 3.3 COP_H.	10.8 EER, 3.3 COP	No.
VRF Heat Pumps, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, No Heating or Electric Resistance Heating [5].	10.6 EER, 12.3 IEER, 3.2 COP_H.	10.6 EER, 13.9 IEER, 3.2 COP_H.	10.6 EER, 3.2 COP	No.
VRF Heat Pumps, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, All Other Types of Heating [4 5].	10.4 EER, 12.1 IEER; 3.2 COP_H.	10.4 EER, 13.7 IEER; 3.2 COP_H.	10.4 EER, 3.2 COP	No.
VRF Heat Pumps, Air-cooled, ≥240,000 Btu/h and <760,000 Btu/h, No Heating or Electric Resistance Heating [5].	9.5 EER, 11.0 IEER, 3.2 COP_H.	9.5 EER, 12.7 IEER, 3.2 COP_H.	9.5 EER, 3.2 COP	No.
VRF Heat Pumps, Air-cooled, ≥240,000 Btu/h and <760,000 Btu/h, All Other Types of Heating [4 5].	9.3 EER, 10.8 IEER; 3.2 COP_H.	9.3 EER, 12.5 IEER; 3.2 COP_H.	9.3 EER, 3.2 COP	No.
VRF Heat Pumps, Water-source, <17,000 Btu/h, Without heat recovery.	12.0 EER, 4.2 COP_H	12.0 EER, 16.0 IEER,[6] 4.3 COP_H [6].	12.0 EER, 4.2 COP	Yes.[7]
VRF Heat Pumps, Water-source, <17,000 Btu/h, With heat recovery.	11.8 EER, 4.2 COP_H	11.8 EER, 15.8 IEER,[6] 4.3 COP_H [6].	11.8 EER, 4.2 COP	Yes.[7]
VRF Heat Pumps, Water-source, ≥17,000 Btu/h and <65,000 Btu/h [8].	12.0 EER, 4.2 COP_H (without heat recovery); 11.8 EER, 4.2 COP_H (with heat recovery).	12.0 EER, 16.0 IEER,[6] 4.3 COP_H [6] (without heat recovery); 11.8 EER, 15.8 IEER,[6] 4.3 COP_H [6] (with heat recovery).	12.0 EER, 4.2 COP	Yes.[9]
VRF Heat Pumps, Water-source, ≥65,000 Btu/h and <135,000 Btu/h [8].	12.0 EER, 4.2 COP_H (without heat recovery); 11.8 EER, 4.2 COP_H (with heat recovery).	12.0 EER, 16.0 IEER,[6] 4.3 COP_H [6] (without heat recovery); 11.8 EER, 15.8 IEER,[6] 4.3 COP_H [6] (with heat recovery).	12.0 EER, 4.2 COP	Yes.[9]
VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <240,000 Btu/h, Without heat recovery.	10.0 EER, 3.9 COP_H	10.0 EER, 14.0 IEER,[6] 4.0 COP_H [6].	10.0 EER, 3.9 COP	Yes.[7]
VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <240,000 Btu/h, With heat recovery.	9.8 EER, 3.9 COP_H	9.8 EER, 13.8 IEER,[6] 4.0 COP_H [6].	9.8 EER, 3.9 COP	Yes.[7]
VRF Heat Pumps, Water-source, ≥240,000 Btu/h and <760,000 Btu/h, Without heat recovery.	10.0 EER, 3.9 COP_H	10.0 EER, 12.0 IEER,[6] 3.9 COP_H.	10.0 EER, 3.9 COP	No.
VRF Heat Pumps, Water-source, ≥240,000 Btu/h and <760,000 Btu/h, With heat recovery.	9.8 EER, 3.9 COP_H	9.8 EER, 11.8 IEER,[6] 3.9 COP_H.	9.8 EER, 3.9 COP	No.

[1] "SEER" means Seasonal Energy Efficiency Ratio; "EER" means Energy Efficiency Ratio; "IEER" means Integrated Energy Efficiency Ratio; "HSPF" means Heating Seasonal Performance Factor; "COP_H" means Coefficient of Performance for heating; and "COP" means Coefficient of Performance (equivalent to COP_H).

[2] Considered equipment classes may differ from the equipment classes defined in DOE's regulations, but no loss of coverage will occur (*i.e.,* all previously covered DOE equipment classes remained covered equipment).

[3] This table represents values in ASHRAE 90.1–2013 as corrected by various errata sheets issued by ASHRAE. All of the IEER values for air-source VRF multi-split system equipment are based on errata sheets. These errata do not impact existing DOE standards, which are in terms of EER, not IEER.

[4] In ASHRAE 90.1, this equipment class is referred to as units with heat recovery rather than all other types of heating.
[5] In terms of Federal standards, VRF Multi-Split Heat Pumps (Air-Cooled) with heat recovery fall under the category of ''All Other Types of Heating'' unless they also have electric resistance heating, in which case it falls under the category for ''No Heating or Electric Resistance Heating.''
[6] Rating effective 1/1/2018.
[7] An energy savings analysis for this class of equipment was not conducted because there is no equipment on the market that would fall into this equipment class.
[8] DOE cannot adopt the ASHRAE Standard 90.1–2016 efficiency standard for units with heat recovery because it would be back-sliding. As in the original final rule adopting standards for VRF multi-split heat systems (final rule for Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment), DOE will not subdivide this equipment class. 77 FR 28928, 28938–28939 (May 16, 2012).
[9] DOE did not conduct an energy savings analysis for this equipment class as when combined with the other water-source equipment class with market share their combined market share is estimated to be less than three percent, which would result in minimal national energy savings.

Before beginning an analysis of the potential energy savings that would result from adopting a uniform national standard at the minimum level specified by ASHRAE Standard 90.1–2016 or a more-stringent uniform national standard, DOE must first determine whether the ASHRAE Standard 90.1–2016 standard levels actually represent an increase in efficiency above the current Federal standard levels, thereby triggering DOE action. This section contains a discussion of each equipment classes of VRF multi-split systems where the ASHRAE Standard 90.1–2016 efficiency levels differed from the ASHRAE Standard 90.1–2013 level(s) [16] (based on a rating metric used in the relevant Federal energy conservation standards) or where ASHRAE created new equipment classes, along with DOE's preliminary conclusion regarding the appropriate action to take with respect to that equipment. DOE is also examining the other equipment classes (*i.e.,* non-triggered classes) of VRFs under its 6-year-lookback authority. (42 U.S.C. 6313(a)(6)(C))

The current Federal energy conservation standards include 20 equipment classes in the equipment category for VRF multi-split systems, which can be found in DOE's regulations at 10 CFR 431.97. The Federal energy conservation standards for VRF multi-split systems are differentiated based on whether it is an air-conditioner or a heat pump, the cooling capacity, and the heat source (air-cooled or water-source). Additionally, air-cooled equipment classes are further differentiated based on the supplemental heating type (No Heating or Electric Resistance Heating; or All Other Types of Heating). Finally, some water-source equipment classes with cooling capacity <17,000 Btu/h or with cooling capacities ≥135,000 Btu/h and <760,000 Btu/h are differentiated based on whether or not they have heat recovery. The DOE equipment classes do not disaggregate per these characteristics in all cases. For example, the VRF multi-split system equipment classes for water-source heat pumps ≥65,000 Btu/h and <135,000 do not differentiate based on whether or not the units have heat recovery. Also, as discussed in the following paragraph, the divisions between equipment classes, including the disaggregation between equipment class capacity ranges, is not entirely consistent between the Federal standards and ASHRAE Standard 90.1–2016.[17]

DOE notes that in ASHRAE Standard 90.1–2016 (as in previous versions of ASHRAE Standard 90.1), the equipment class VRF Heat Pumps, Water-source, ≥17,000 Btu/h and <65,000 Btu/h and the equipment class VRF Heat Pumps, Water-source, ≥65,000 Btu/h and <135,000 Btu/h are disaggregated into units with heat recovery and units without heat recovery, with each ASHRAE equipment class having a separate minimum cooling efficiency. Currently, the Federal standards do not disaggregate such VRF multi-split systems based on the presence of heat recovery. The cooling efficiency EER standard in ASHRAE Standard 90.1–2016 for these units with heat recovery is below the current Federal standard. Under EPCA, the Secretary may not prescribe any amended standard under the ASHRAE review provisions that increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Therefore, as in May 2012 final rule, DOE has not subdivided these equipment classes. DOE does not consider whether heat recovery is a performance characteristic under 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa), unless DOE is doing so in the context of considering uniform national standards that are more-stringent than the corresponding standards set by ASHRAE in Standard 90.1.

DOE also notes that ASHRAE Standard 90.1–2016 has subdivided the VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <760,000 Btu/h classes, both with and without heat recovery, into separate equipment classes for units with cooling capacities ≥135,000 Btu/h and <240,000 Btu/h and units with cooling capacities ≥240,000 Btu/h and <760,000 Btu/h, and included different minimum efficiency levels for each. All efficiency levels meet or exceed the current Federal standards for DOE's broader efficiency class. Further, although DOE does not regulate VRF multi-split systems with an efficiency metric of IEER, ASHRAE Standard 90.1–2016 specifies lower IEER standards for water-source systems that are ≥240,000 Btu/h, as compared to those in the ≥135,000 Btu/h and <240,000 Btu/h class. As such, DOE is assuming that there could be technical reasons for which water-source systems in the ≥240,000 Btu/h and <760,000 Btu/h cooling capacity range may not be able to achieve the same efficiency levels as systems that are ≥135,000 Btu/h and <240,000 Btu/h, and that this likely justifies establishing separate DOE equipment classes which are split at the 240,000 Btu/h point. For these reasons, DOE is considering revising its current equipment class structure to align more closely with the structure used by ASHRAE Standard 90.1–2016. If DOE were to revise the above water-source equipment classes, then the total number of equipment classes for VRF multi-split systems would increase from 20 to 22.

Issue 1: DOE requests feedback on its consideration of additional equipment classes for VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <760,000 Btu/h, both with and without heat recovery, by separating the equipment classes into units with cooling capacities ≥135,000 Btu/h and <240,000 Btu/hand and units with cooling capacities ≥240,000 Btu/h and <760,000 Btu/h.

ASHRAE Standard 90.1–2016 increased the heating energy efficiency levels, as represented by the COP metrics, for six of the 20 DOE

[16] ASHRAE Standard 90.1–2016 did not change any of the design requirements for the commercial heating, air conditioning, and water heating equipment covered by EPCA, so this potential category of change is not discussed in this section.

[17] In addition to the items listed in the subsequent paragraphs, there are some nomenclature differences in the VRF air-cooled heat pump equipment classes, as described in Table I.1.

equipment classes in the VRF multi-split system equipment category that DOE is considering for this NODA.[18] These classes are:

1. VRF Heat Pumps, Water-source, <17,000 Btu/h, Without heat recovery
2. VRF Heat Pumps, Water-source, <17,000 Btu/h, With heat recovery
3. VRF Heat Pumps, Water-source, ≥17,000 Btu/h and <65,000 Btu/h
4. VRF Heat Pumps, Water-source, ≥65,000 Btu/h and <135,000 Btu/h
5. VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <240,000 Btu/h, Without heat recovery
6. VRF Heat Pumps, Water-source, ≥135,000 Btu/h and <240,000 Btu/h, With heat recovery

B. Energy Savings Potential for Considered Equipment Classes

As required under 42 U.S.C. 6313(a)(6)(A), for VRF equipment classes for which ASHRAE Standard 90.1–2016 set more stringent levels than the current Federal standards, DOE performed an assessment to determine the energy-savings potential of amending Federal standard levels to reflect the efficiency levels specified in ASHRAE Standard 90.1–2016.

DOE has determined, based on a report by Cadeo Group,[19] that four of the six VRF water-source classes for which ASHRAE Standard 90.1–2016 increased the energy efficiency levels—those with cooling capacities that are less than 17,000 Btu/h or greater than or equal to 135,000 Btu/h—do not have any market share and, therefore, no energy savings potential at this time. Also based on the Cadeo Group report, DOE has tentatively determined that the remaining two VRF water-source classes, with cooling capacities greater than or equal to 17,000 Btu/h and less than 135,000 Btu/h, together represent only three percent of the entire VRF market. Due to the low market share and corresponding minimal total potential energy savings, DOE has tentatively determined that the energy savings potential for more stringent efficiency standards for these two equipment classes is *de minimis.*

Given the extremely low market share of the VRF equipment classes for which DOE was triggered, DOE did not conduct a quantitative estimate of potential energy savings. If DOE does not identify any other data regarding market share for the above six classes, DOE would propose to adopt the levels in ASHRAE 90.1–2016 as the Federal standards, as required by EPCA, because more-stringent standards for these equipment classes would be unlikely to produce significant additional energy savings.

Issue 2: DOE requests feedback on its proposal to adopt the levels in ASHRAE 90.1–2016 as the Federal standards for the six VRF water-source classes that are triggered by ASHRAE 90–1.2016.

III. Consideration of More-Stringent Standards: Requested Information

As discussed, if DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE Standard 90.1 level for the equipment in question would result in significant additional conservation of energy and is technologically feasible and economically justified, DOE must adopt the more-stringent standard. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (B)(i)) Therefore, for the six equipment classes identified in the prior section for which ASHRAE has amended the standards, DOE is evaluating whether more-stringent standards would meet the specified statutory criteria (as discussed in section II of this notice).

In addition, DOE is also evaluating the remaining 16 VRF equipment classes for which ASHRAE Standard 90.1–2016 did not increase the stringency of the standards pursuant to the six-year look-back provision at 42 U.S.C. 6313(a)(6)(C)(i). In making a determination of whether standards for such equipment need to be amended, DOE must also follow specific statutory criteria. Similar to the consideration of whether to adopt a standard more stringent than an amended ASHRAE Standard 90.1 standard, DOE must evaluate whether amended Federal standards would result in significant additional conservation of energy and are technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i)(I)–(II))

A. Rulemaking Process

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increases in the price, initial charges, or maintenance expenses for the covered equipment likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)).

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table III.I shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE III.I—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis.

[18] ASHRAE 90.1–2016 left in place the existing EER levels for these classes, which are equivalent to current Federal standards.

[19] Cadeo Report, Variable Refrigerant Flow: A Preliminary Market Assessment. See: *https://www.regulations.gov/document?D=EERE-2017-BT-TP-0018-0002.* The report presents market share by VRF multi-split system equipment class, based on confidential sales data given in interviews with several major manufacturers of VRF multi-split equipment and DOE's Compliance Certification Database.

TABLE III.I—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE analysis
2. Lifetime operating cost savings compared to increased cost for the product ..	• Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis. • Markups for Product Price Determination. • Energy and Water Use Determination.
3. Total projected energy savings	• Life-Cycle Cost and Payback Period Analysis. • Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses for VRF multi-split systems. The issues listed below primarily pertain to the VRF market and the requested information will be relevant to conducting the technical and economic analyses. Information received in response to this document is intended to supplement any information received in the course of the ASRAC Working Group's efforts.

B. Request for Information and Comment

In addition to the specific issues identified below on which DOE seeks comment, DOE requests comment on its overall approach and analyses that will be used to evaluate potential standard levels for VRFs. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. *See* 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to VRF multi-split systems while remaining consistent with the requirements of EPCA.

Based on the Cadeo report, DOE has determined that only four of the 16 equipment classes for which ASHRAE Standard 90.1 did not amend the standard have market share, specifically the air-source heat pumps with cooling capacities greater than or equal to 65,000 Btu/h and less than 240,000 Btu/h. These equipment classes, which are listed below, are the focus of DOE's request for information.

1. VRF Heat Pumps, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, No Heating or Electric Resistance Heating
2. VRF Heat Pumps, Air-cooled, ≥65,000 Btu/h and <135,000 Btu/h, All Other Types of Heating
3. VRF Heat Pumps, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, No Heating or Electric Resistance Heating
4. VRF Heat Pumps, Air-cooled, ≥135,000 Btu/h and <240,000 Btu/h, All Other Types of Heating

Below are the specific issues that DOE is seeking input and data from interested parties pertaining to the VRF multi-split system market and industry.

Issue 3: DOE seeks comment on whether, in the context of its consideration of more-stringent standards, there have been sufficient technological or market changes for VRFs since the most recent standards update that may justify a new rulemaking to consider more-stringent standards. Specifically, DOE seeks data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more-stringent standard: (1) Would not result in significant additional savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of the foregoing.

Issue 4: DOE requests information on the typical applications of VRF multi-split systems and what the most common applications are (*e.g.,* specific building types and climates). DOE also requests information on typical practices for sizing outdoor units (*e.g.,* sized to match calculated building loads or oversized) and zoning indoor units.

Issue 5: DOE seeks historical shipments data for VRF multi-split systems and projections for growth of the market based on trends stakeholders have observed. DOE is interested in this data by equipment class, efficiency, and climatic region.

Issue 6: DOE requests data on the breakdown of the market between new construction, replacements, and new owners (*i.e.,* owners that choose to replace their current system with a VRF multi-split system in an existing building).

A table of the types of shipments data requested in Issues 5 and 6 can be found in Table III.2 of this document. Interested parties are also encouraged to provide additional shipments data as may be relevant.

TABLE III.2—SUMMARY TABLE OF SHIPMENTS DATA REQUESTS

Equipment class	Annual shipments (year)		
	New construction	New owners	Replacements
Air-Cooled, No Heating or Electric Resistance	≥65,000 Btu/h and <135,000. ≥135,000 Btu/h and <240,000 Btu/h.		
Air-Cooled, All Other Types of Heating	≥65,000 Btu/h and <135,000. ≥135,000 Btu/h and <240,000 Btu/h.		

As part of the manufacturer impact analysis (MIA), DOE intends to analyze potential impacts of amended energy conservation standards on subgroups of manufacturers of covered equipment, including small business manufacturers. DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the applicable North American Industry Classification System (''NAICS'') code. Manufacturing of VRF multi-split systems is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' and the SBA sets a threshold of 1,250 employees or less for a domestic entity to be considered as a small business 13 CFR 121.201. This employee threshold includes all employees in a business' parent company and any other subsidiaries.

Issue 7: DOE requests the names and contact information of small business manufacturers, as defined by the SBA's size threshold, of VRF multi-split systems that distribute products in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by amended energy conservation standards for VRF multi-split systems. DOE requests feedback on any potential approaches that could be considered to address impacts on manufacturers, including small businesses.

Issue 8: To the extent feasible, DOE seeks to identify all VRF multi-split system manufacturers that currently distribute equipment in the United States. Currently, DOE has identified Daikin, Fujitsu, GD Midea, Gree, Hitachi, LG, Mitsubishi, Panasonic, Samsung, and Toshiba as VRF multi-split system manufacturers. DOE seeks comment on the comprehensiveness of this list of manufacturers, and requests the names and contact information of any other domestic or foreign-based manufacturers that sell or otherwise market their VRF multi-split systems in the United States.

C. Other Energy Conservation Standards Topics

1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for VRF multi-split systems.

2. Network Mode/''Smart'' Equipment

DOE recently published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data, and information on the issues presented in the RFI as they may be applicable to VRFs.

3. Other

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of energy conservation standards for VRF multi-split systems not already addressed by the specific areas identified in this document.

IV. Public Participation

DOE invites all interested parties to submit in writing by the date specified previously in the **DATES** section of this document, comments, data, and information on matters addressed in this NODA and RFI and on other matters relevant to DOE's consideration of amended energy conservation standards for VRF multi-split systems. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment

tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of data availability and request for information.

Signed in Washington, DC, on June 28, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2019–14461 Filed 7–5–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0522; Product Identifier 2019–NM–082–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A320–251N and –271N airplanes, and Model A321–251N, –253N, –271N, and –272N airplanes. This proposed AD was prompted by reports that the regulated bleed temperature was measured above the design target with a temperature regulation shift phenomenon, and investigation results show that incorrect temperature regulation can degrade pneumatic system components located downstream of the pre-cooler. This proposed AD would require uploading improved bleed monitoring computer (BMC) software (SW), as specified in a European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 22, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, at Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.*

You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0522.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0522; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0522; Product Identifier 2019–NM–082–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0094, dated April 26, 2019 (''EASA AD 2019–0094'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A320–251N and –271N airplanes, and Model A321–251N, –253N, –271N, and –272N airplanes. The MCAI states:

> During some flight tests of [Airbus SAS] A320 and A321 NEO (new engine option) aeroplanes, the regulated bleed temperature was measured above the design target with a temperature regulation shift phenomenon. The investigation results show that incorrect temperature regulation can degrade pneumatic system components located downstream of the pre-cooler.
>
> This condition, if not corrected, could lead to hot air leakage and consequent bleed loss, possibly resulting in the reduction of the system equipment safety margin.
>
> To address this potential unsafe condition, Airbus developed an improved BMC SW, and issued the SB [service bulletin] A320–36–1078 to provide instructions for BMC SW uploading.
>
> For the reasons described above, this [EASA] AD requires modification of the affected parts and prohibits (re)installation of affected parts.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0094 describes procedures for uploading BMC SW standard 4.3. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0094 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019–0094 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 219–0094 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0094 that is required for compliance with EASA AD 2019–0094 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0522 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 85 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$28,900

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Will not affect intrastate aviation in Alaska; and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus SAS: Docket No. FAA–2019–0522; Product Identifier 2019–NM–082–AD.

(a) Comments Due Date

The FAA must receive comments by August 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A320–251N and –271N airplanes, and Model A321–251N, –253N, –271N, and –272N airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Reason

This AD was prompted by reports that the regulated bleed temperature was measured above the design target with a temperature regulation shift phenomenon, and investigation results show that incorrect temperature regulation can degrade pneumatic system components located downstream of the pre-cooler. The FAA is issuing this AD to address this condition, which, if not corrected, could lead to hot air leakage and consequent bleed loss, possibly resulting in the reduction of the system equipment safety margin.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (EASA) AD 2019–0094, dated April 26, 2019 (''EASA AD 2019–0094'').

(h) Exceptions to EASA AD 2019–0094

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0094 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0094 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0094 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0094, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0094 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0522.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

Issued in Des Moines, Washington, on June 27, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14286 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0478; Product Identifier 2019–NM–040–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–12–07, which applies to certain The Boeing Company Model 737–800, –900, and –900ER series airplanes. AD 2017–12–07 requires replacing the affected left temperature control valve and control cabin trim air modulating valve. Since the FAA issued AD 2017–12–07, the agency determined that the affected parts may be installed on airplanes outside the original applicability of AD 2017–12–07. This proposed AD would retain the requirements of AD 2017–12–07, expand the applicability to include those other airplanes, and add a new requirement for certain airplanes to identify and replace the affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 22, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0478.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0478; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Julie Moon, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3571; email: *julie.moon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0478; Product Identifier 2019–NM–040–AD'' at the beginning of your comments. The agency specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The agency will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this proposed AD.

Discussion

The FAA issued AD 2017–12–07, Amendment 39–18922 (82 FR 27416, June 15, 2017) (''AD 2017–12–07''), for certain The Boeing Company Model 737–800, –900, and –900ER series airplanes. AD 2017–12–07 requires replacing the affected left temperature control valve and control cabin trim air modulating valve. AD 2017–12–07 resulted from reports of in-flight failure of the left temperature control valve and control cabin trim air modulating valve. The FAA issued AD 2017–12–07 to address the possible occurrence of temperatures in excess of 100 degrees Fahrenheit in the flight deck or the passenger cabin during cruise, which could lead to the impairment of the flightcrew and prevent continued safe flight and landing.

Actions Since AD 2017–12–07 Was Issued

Since AD 2017–12–07 was issued, it has been determined that the affected parts may be installed as rotable spares on airplanes outside of the applicability of AD 2017–12–07, thereby subjecting those airplanes to the unsafe condition.

Related Service Information Under 1 CFR Part 51

This proposed AD would require Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016, which the Director of the Federal Register approved for incorporation by reference as of July 20, 2017 (82 FR 27416, June 15, 2017). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2017–12–07, and expand the applicability to include all The Boeing Company Model 737–800, –900, and –900ER series airplanes. This proposed AD would also require an inspection or records check to identify the part number of the affected parts, and for airplanes with affected parts, accomplishing the actions specified in the service information described previously, except as discussed under

''Differences Between this Proposed AD and the Service Information.''

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0478.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016, is limited to certain The Boeing Company Model 737–800, -900, and -900ER series airplanes. However, the applicability of this proposed AD includes all The Boeing Company Model 737–800, –900, and –900ER series airplanes. Because the affected parts are rotable parts, the FAA has determined that these parts could later be installed on airplanes that were initially delivered with acceptable parts, thereby subjecting those airplanes to the unsafe condition. This difference has been coordinated with Boeing.

Costs of Compliance

The FAA estimates that this proposed AD affects 2,027 airplanes of U.S. registry. The agency estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/records check (new proposed actions) (Up to 1,708 airplanes).	1 work-hour × $85 per hour = $85	$0	$85	Up to $145,180.
Replacement (retained actions from AD 2017–12–07) (Up to 319 airplanes).	9 work-hours × $85 per hour = $765	4,800	5,565	Up to $1,775,235.

The agency estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection or records check. The agency has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	9 work-hours × $85 per hour = $765	$4,800	$5,565

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–12–07, Amendment 39–18922 (82 FR 27416, June 15, 2017), and adding the following new AD:

The Boeing Company: Docket No. FAA–2019–0478; Product Identifier 2019–NM–040–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by August 22, 2019.

(b) Affected ADs

This AD replaces AD 2017–12–07, Amendment 39–18922 (82 FR 27416, June 15, 2017).

(c) Applicability

This AD applies to all The Boeing Company Model 737–800, -900, and -900ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports of in-flight failure of the left temperature control valve and control cabin trim air modulating valve. The FAA is issuing this AD to address the possible occurrence of temperatures in excess of 100 degrees Fahrenheit in the flight deck or the passenger cabin during cruise, which could lead to the impairment of the flightcrew and prevent continued safe flight and landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Valve Replacement, With Revised Compliance Language

This paragraph restates the requirements of paragraph (g) of AD 2017–12–07 with revised compliance language. For airplanes identified in Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016: Within 60 months after July 20, 2017 (the effective date of AD 2017–12–07), replace the left temperature control valve and control cabin trim air modulating valve, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016.

(h) New Valve Identification and Replacement

For airplanes not identified in paragraph (g) of this AD with an original certificate of airworthiness or an original export certificate of airworthiness dated on or before the effective date of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Within 60 months after the effective date of this AD, perform a general visual inspection of the left temperature control valve and control cabin trim air modulating valve to determine the valve part numbers. A review of airplane maintenance records is acceptable in lieu of this inspection if the part numbers of the valves can be conclusively determined from that review.

(2) If the left temperature control valve or control cabin trim air modulating valve has part number 398908–4: Within 60 months after the effective date of this AD, replace the left temperature control valve or control cabin trim air modulating valve in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–21A1203, dated June 8, 2016.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a valve having part number 398908–4, in either the left temperature control valve location or the control cabin trim air modulating valve location on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Julie Moon, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3571; email: *julie.moon@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 24, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14284 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0487; Product Identifier 2019–NM–044–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by a report of a fuel leak resulting from a crack on the left in-spar upper wing skin. This proposed AD would require repetitive surface high frequency eddy current (HFEC) inspections of the left and right upper wing skin, and repetitive general visual inspections of the upper wing skin in the adjacent rib bay areas for any crack, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 22, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0487.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0487; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0487; Product Identifier 2019–NM–044–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The agency will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments, without change, to *http://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this proposed AD.

Discussion

The FAA has received an operator report of a fuel leak resulting from a crack on the left in-spar upper wing skin. The crack was found at wing buttock line 157, between stringer 4 and stringer 5 and measured approximately 2.5 inches in length. The crack was caused by higher local stress than predicted, possibly attributable to fit-up issues from the rib installation. This condition, if not addressed, could result in a crack in the upper wing skin growing undetected, which could result in the inability of the structure to carry limit load and adversely affect the structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019. The service information describes procedures for repetitive surface HFEC inspections of the left and right upper wing skin at wing buttock line 157, between stringer 4 and stringer 5, and repetitive general visual inspections of the upper wing skin in the adjacent rib bay areas for any crack, and applicable on-condition actions. On-condition actions include repair.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0487.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 160 airplanes of U.S. registry. The agency estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC Inspection and General Visual Inspection.	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.	$13,600 per inspection cycle.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repair specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2019–0487; Product Identifier 2019–NM–044–AD.

(a) Comments Due Date

The FAA must receive comments by August 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a fuel leak resulting from a crack on the left in-spar upper wing skin. The FAA is issuing this AD to address cracks in the upper wing skin, which could grow undetected. This condition, if not addressed, could result in the inability of the structure to carry limit load and adversely affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019: Within 120 days after the effective date of this AD, do a surface high frequency eddy current (HFEC) inspection of the left and right upper wing skin and a general visual inspection of the upper wing skin in the adjacent rib bay areas for any crack, and do applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Groups 2 and 3 Airplanes

Except as specified by paragraph (i) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–57A1344, dated February 18, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019.

(i) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019, uses the phrase ''the original issue date of Requirements Bulletin 737–57A1344 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any inspection, repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the inspection, repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on June 24, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–14285 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1239

[Docket No. CPSC–2019–0014]

Safety Standard for Gates and Enclosures

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the United States Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. Accordingly, the Commission is proposing a safety standard for gates and enclosures in response to the direction under Section 104(b) of the CPSIA. The Commission is also amending its regulations regarding third party conformity assessment bodies to include the safety standard for gates and enclosures in the list of notice of requirements (NORs) issued by the Commission.

DATES: Submit comments by September 23, 2019.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

Other comments, identified by Docket No. CPSC–2019–0014, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2019–0014, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Hope Nesteruk, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2579; email: *hnesteruk@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to: (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. These standards are to be ''substantially the same as'' the applicable voluntary standards or more stringent than the voluntary standard if the Commision concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' ''Gates and other enclosures for confining a child'' are specifically identified in section 104(f)(2)(G) of the CPSIA as a durable infant or toddler product.

Pursuant to Section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this proposed standard, largely through the ASTM process. The proposed rule is based on the voluntary standard developed by ASTM International, ASTM F1004–19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures* (ASTM F1004–19). The ASTM standard is copyrighted, but it can be viewed as a read-only document during the comment period at: *https://www.astm.org/CPSC.htm,* by permission of ASTM.

II. Product Description

A. Definition of ''Gates and Other Enclosures''

ASTM F1004–19 defines an ''expansion gate'' as a ''barrier intended to be erected in an opening, such as a doorway, to prevent the passage of young children, but which can be removed by older persons who are able to operate the locking mechanism'' (section 3.1.7). ASTM F1004–19 defines an ''expandable enclosure'' as a ''self-supporting barrier intended to completely surround an area or play-space within which a young child may be confined'' (section 3.1.6). These products are intended for young children aged 6 months through 24 months (section 1.2).

Although the title of the ASTM F1004–19 standard and its definitions include the word ''expansion'' and ''expandable'' before the words ''gate'' and ''enclosure,'' respectively, the scope of the ASTM F1004–19 standard includes all children's gates and enclosures, whether they expand or not. ASTM F1004–19 covers: ''[p]roducts known as expansion gates and expandable enclosures, *or by any other name,*'' (section 1.2, emphasis added).[1] Both expandable gates and non-expandable gates may serve as barriers that are intended to be erected in an opening, such as a doorway, to prevent the passage of young children. Both expandable enclosures and non-expandable enclosures may serve as barriers intended to completely surround an area or play-space to confine young children. Similarly, all children's gates and enclosures, whether

[1] Gates or enclosures for non-domestic use (such as commercial or industrial), and those intended for pets only, are not covered under the scope of ASTM F1004–19.

they expand or not, can be removed by older persons who are able to operate the locking mechanism.

CPSC staff's review of enclosures shows that all enclosures are expandable. Staff's review of gates showed that there some non-expandable, fixed-sized gates available for sale.[2] However, most of the gates and enclosures sold in the United States that are intended for children expand because they vary in width (for gates) or shape (enclosures). CPSC staff's review of hazard patterns indicates that all children's gates and enclosures present the same hazards, whether they expand or not. These hazards include injuries caused by hardware-related issues, slat problems, poor quality materials and finish, design issues, and installation problems. Accordingly, the proposed CPSC standard addresses all children's gates and enclosures intended for confining a child, including non-expandable, fixed-sized gates and enclosures.

Gates and enclosures may be made of a wide range of materials: plastic, metal, wood, cloth, mesh, or combinations of several materials. Gates typically have a means of egress that allows adults to pass through them; but some enclosures (*i.e.,* some self-supporting barriers have egress panels that resemble gates) also have a means of egress. Gates may be hardware-mounted, pressure-mounted, or both. Hardware-mounted gates generally require screws and cannot be removed without tools. Pressure-mounted gates attach like a pressure-fit curtain rod, using pressure on each end to hold the gate stable; they are intended for consumers who prefer to be able to move their gate, or who do not want to permanently mark their walls. Mounting cups can be attached to one or more locations, and the gate can be removed, as needed, or moved to other locations.

B. Market Description

Approximately 113 firms supply gates and enclosures to the U.S. market. The vast majority of suppliers to the U.S. market are domestic (109 firms). Of these, 83 appear to be very small, home-based domestic manufacturers. Approximately 10.86 million gates/enclosures were in use in U.S. households with children under the age of 5 in 2013, according to the CPSC's 2013 Durable Nursery Product Exposure Survey (DNPES).

Gates and enclosures vary widely in price. Plastic pressure gates can be purchased for as little as $10, but designer metal gates can cost as much as $430. Retail prices for enclosures and products that can operate either as an enclosure or gate range from $74 to $585, with the less expensive products tending to be made of plastic, and the more expensive products tending to be made of wood.[3] Gates supplied by home-based manufacturers average $200, although fabric gates are less expensive ($44 on average), and wooden gates with iron spindles are more expensive ($525 on average).

III. Incident Data

CPSC staff reviewed incident data associated with children's gates and enclosures as reported through the Consumer Product Safety Risk Management System (CPSRMS).[4] Staff also reviewed national injury estimates, discussed below. Although these products are intended for use with young children between the ages of 6 months and 24 months, interaction with the gates and enclosures with older siblings and adult caregivers is a foreseeable use pattern, and adults are required to install such products properly to prevent injuries. CPSC staff reviewed the incident data involving older children and adults to determine hazard patterns; however, only *injuries* sustained by children younger than 5 years of age were included in the incident data reported for the proposed rule. The Commission is aware of a total of 436 reported incidents related to gates and enclosures that occurred between January 1, 2008 and October 31, 2018. Of the 436 incidents, 394 were associated with the use of a gate, while 42 were associated with an enclosure. Nineteen of the incidents reported a fatality; 108 of the 417 nonfatal incidents reported an injury. Because reporting is ongoing, the number of reported fatalities, nonfatal injuries, and non-injury incidents may change in the future.

A. Fatalities

The Commission is aware of 19 deaths that occurred between January 1, 2008 and October 31, 2018. Seventeen of the deaths were associated with the use of a gate, while two were associated with an enclosure. Fifteen of the 19 decedents drowned, 13 in a backyard pool, one in a backyard hot tub, and one in a 5-gallon bucket of water inside the house. In these incidents, the decedents managed to get past the gate/enclosure when it was left open or was opened somehow, without the caregiver's knowledge (10 incidents); the gate/enclosure was knocked down or pushed out by the decedent due to incorrect or unsecured installation (4 incidents); or the decedent climbed over the gate/enclosure (1 incident). The decedents ranged in age from 9 months to 3 years.

Of the remaining four of 19 total deaths reported: An 8-month-old was found trapped between a mattress and an expansion gate in a recreational vehicle; a 23-month-old was trapped under a TV that fell on him when he was hanging on the edge of a safety gate that was secured to the TV stand with a rope; a 20-month-old was entrapped between a wall and a repaired/modified safety gate when the gate partially detached from the wall; and a 2-year-old got his neck entrapped between two safety gates set up in a stacked configuration.

B. Nonfatalities

The Commission is aware of a total of 417 nonfatal incidents related to safety gates and enclosures that reportedly occurred between January 1, 2008 and October 31, 2018. Of these, 108 incidents reported an injury to a child younger than 5 years of age.

Three of the injuries reportedly required hospitalization and two additional injuries needed overnight observation at a hospital. Among the hospitalized were a 2-year-old and an 18-month-old, both suffered a near-drowning episode, and another 2-year-old who ended up in a coma due to a fall when she pushed through a safety gate at the top of stairs. Of the two children who were held at a hospital for overnight observation, one fell down stairs when a safety gate collapsed, and the other swallowed a bolt or screw that liberated from a gate.

Fifteen additional children were reported to have been treated and released from a hospital emergency department (ED). Their injuries included: (a) finger fractures, amputations, and/or lacerations usually from a finger getting caught at the hinge; and (b) near-drowning, poison ingestion, arm fracture, thermal burn, head injury, or contusions.

Among the remaining injury reports, some specifically mentioned the type of injury, while others only mentioned an injury, but no specifics about the injury.

[2] The vast majority of non-expandable, fixed-size gates are sold by home-based manufacturers with very low sales volumes.

[3] Some of the enclosures designed for daycare centers and preschools can run above $1,000 with all the specialty extensions.

[4] The CPSC databases searched were the In-Depth Investigation (INDP) file, the Injury or Potential Injury Incident (IPII) file, and the Death Certificates (DTHS) file. These reported deaths and incidents are neither a complete count of all that occurred during this time period nor a sample of known probability of selection. However, they do provide a minimum number of deaths and incidents occurring during this time period and illustrate the circumstances involved in the incidents related to children's gates and enclosures.

Head injuries, concussions, teeth avulsions, sprains, abrasions, contusions, and lacerations were some of the common injuries reported.

The remaining 309 incidents reported that no injury had occurred or provided no information about any injury. However, some of the descriptions regarding the incidents indicated the potential for a serious injury or even death.

C. National Injury Estimates

CPSC staff also reviewed injury estimates from the National Electronic Injury Surveillance System (NEISS), a statistically valid injury surveillance system.[5] NEISS injury data are gathered from EDs of hospitals selected as a probability sample of all the U.S. hospitals with EDs. CPSC staff found an estimated total of 22,840 injuries (sample size=820, coefficient of variation=0.10) related to children's gates and enclosures that were treated in U.S. hospital EDs over the 10-year period 2008–2017. There was no statistically significant trend observed over the entire 2008–2017 period. NEISS data for 2018 will be reviewed prior to the issuance of a final rule.

No fatalities were reported through NEISS. About 19 percent of the injured victims were less than a year old; 40 percent were at least a year old, but less than 2 years of age; and another 41 percent were at least 2, but less than 5 years of age. NEISS injury descriptions are brief and focus more on the injury than the scenario-specific details. Therefore, a detailed hazard pattern characterization, as conducted for incidents reported through CPSRMS, is not feasible. However, based on the limited information available, CPSC staff determined that some of the most frequent NEISS injury characteristics were as follows:

- Hazard—falls (57%) and impact on gate/enclosure (31%). Most of the falls occurred when:
  - A child successfully climbed over the barrier and (usually) fell down a flight of steps; when a child unsuccessfully attempted to climb over the barrier; or a child-carrying-adult tripped on a gate/enclosure and dropped the child;
  - gates failed to remain upright and locked; or
  - a child managed to defeat the barrier by crawling/sliding under, or ''getting around'' the barrier in an unspecified manner.
- Injury—almost 10 percent of the impact injuries occurred when a child fell down a flight of steps and hit a safety gate at the bottom of the stairs:
  - Injured body part—head (40%), face (21%), and mouth (10%).
  - Injury type—lacerations (28%), internal organ injury (23%), and contusions/abrasions (20%).

Most of the injured victims were treated and released (97%).

IV. Hazard Pattern Identification

CPSC staff reviewed 436 reported incidents (19 fatal and 417 nonfatal) to identify hazard patterns associated with the use of children's gates and enclosures. Staff grouped the hazard patterns into three categories: Product-related, non-product-related, and undetermined. Most of the reported problems (94%) were product-related. The categories and subcategories (in order of descending frequency) are:

A. Product-Related

- *Hardware issues:* Of the 436 incidents, 163 (37%) reported some sort of hardware-related problems. These problems were due to:
  - lock/latch hardware (*e.g.,* lock or latch breaking, not latching correctly, opening too easily, or getting stuck)
  - hinge hardware (mostly breaking and causing the gate to fall off)
  - mounting hardware (mostly breaking and causing gate to fall off), or
  - other hardware such as a slide guide or a swing-control clip (breaking or coming loose).

  These hardware failures were associated with 38 injuries, such as contusions, lacerations, head injuries, and two fractures; five of the injuries were treated in a hospital ED, and one needed overnight observation at a hospital.
- *Slat problems:* Of the 436 incidents, 107 (25%) reported slats breaking or detaching from the safety gate or enclosure. Sixteen injuries were reported in this category, resulting in contusions/abrasions or lacerations. Once the slat(s) broke, the child either got injured on it, fell forward through the gap created, or lost balance and fell backwards. One of the injuries was treated at a hospital ED.
- *Poor quality material and finish:* Of the 436 incidents, 50 (11%) reported problems with small parts liberating, splintered welding, sharp edges and protrusions, rails bending out of shape, fabric/mesh panels sagging, and poor quality of stitching on fabric panels. Eighteen injuries, mostly lacerations and abrasions, were reported in this category.
- *Design issues:* Of the 436 incident reports, 42 (10%) indicated some problems with the design of the gate or enclosure. The reported problems were with:
  - The opening size between slats or enclosure panels that allowed a child to get their limbs or head entrapped;
  - the pinch-point created during the opening and closing action of the door on the gate or enclosure;
  - a specific design, which created a foot-hold that a child could use to climb over the safety gate; or
  - a specific design that posed a trip hazard when the gate was in the open position.

  Nineteen injuries were in this category, including three fractures of the finger and one severed fingertip, all treated at a hospital ED.
- *Installation problems:* Of the 436 incident reports, 20 (5%) indicated problems with installation due to:
  - unclear installation instructions;
  - mismatched dimensions between the safety gate and the doorway/hallway opening; or
  - unknown reasons; in these cases, the gate/enclosure was reported to have been installed, but was somehow ''pushed out'' or ''pulled down.''

  Four drowning fatalities were reported in this category. In addition, there were four nonfatal injuries: One a hospitalization of a comatose child; another child treated and released from a hospital ED following a near-drowning episode; and the remaining two, relatively minor laceration/contusion injuries.
- *Miscellaneous other issues and consumer comments:* Seven of the 436 incident reports (2%) included three complaints about an ineffective recall remedy, one complaint about poor product packaging, and three consumer concerns about the safety of a specific design. There was one unspecified injury in this category.
- *Instability issues in enclosures:* Three of the 436 incidents (<1%) reported problems with flimsy and/or unstable enclosures. Two laceration/contusion injuries were reported in this category.
- *Multiple problems from among the above:* Twenty of the 436 incident reports (5%) described two or more problems from the preceding product-related issues. Two minor injuries were reported in this category.[6]

[5] According to the NEISS publication criteria, to derive a reportable national estimate, an estimate must be 1,200 or greater, the sample size must be 20 or greater, and the coefficient of variation must be 33 percent or smaller.

[6] Redistributing these 20 complaints among the other pertinent subcategories within the product-related issues does not alter the ranking of the listed subcategories. However, the redistribution would result in the within-subcategory incident numbers adding up to *more* than the total number of incident reports. To prevent that, the 20 incidents were grouped in a separate subcategory.

B. Non-Product-Related

Eleven of the 436 incident reports (3%) described non-product-related issues, such as incorrect use of the product, or the child managing to bypass the barrier altogether. Specifically:

- Four incidents reported the child climbing over the gate/enclosure;
- Three incidents reported caregiver missteps allowing the gate/enclosure not to be secured in place;
- Three incidents reported misuse of gates in a hazardous manner; and
- One report involving a gate previously repaired/modified and structurally compromised.

Eight deaths are included in this category: Four due to drowning, three due to entrapments, and one due to a TV tip over. Among the three injuries, one required hospitalization following a near-drowning episode, and one fractured arm was treated at a hospital ED; the third injury was a concussion of the forehead.

C. Undetermined

Thirteen of the 436 incident reports (3%) fell into the undetermined category. There was insufficient information on the scenario-specific details for CPSC staff to determine definitively whether the product failed or user error resulted in the incidents. Seven drowning deaths were reported in this category. Among the five nonfatal injuries, one was a hospitalization due to near-drowning, two were treated at a hospital ED for poisonous ingestion and burn, respectively, and two were minor injuries.

D. Product Recalls

CPSC staff reviewed recalls involving children's gates and enclosures from January 2008 to December 2018. During that period, there were five recalls involving baby gates and one recall involving an enclosure. The total number of units recalled was 1,318,180. The recalls involved fall, entrapment, tripping, and laceration hazards to children. There were a total of 215 incidents reported, of which 13 resulted in injuries.

V. Voluntary Standard—ASTM F1004

A. History of ASTM F1004

The voluntary standard for gates and enclosures was first approved and published in 1986 (ASTM F1004–86, *Standard Consumer Safety Specification for First-Generation Standard Expansion Gates and Expandable Enclosures*). Between 1986 and 2013, ASTM F1004 underwent a series of revisions to improve the safety of gates and enclosures and the clarity of the standard. Revisions made during this period included provisions to address foot-pedal actuated opening systems, warnings, evaluation of all manufacturer's recommended use positions, test fixture improvements, entrapment in openings along the side of the gate, lead-containing substances in surface, along with other minor clarifications and editorial corrections.

Beginning in 2014, CPSC staff worked closely with ASTM to address identified hazards and to strengthen the voluntary standard and improve the safety of children's gates and enclosures in the U.S. market. ASTM made revisions through several versions of the standard (ASTM F1004–15, ASTM F004–15a, ASTM F1004–16, ASTM F1004–16a, ASTM F1004–16b, and ASTM F1004–18) to address hazards associated with bounded openings, slat breakage/slat connection failures, mounting/hinge hardware issues, latch/lock failures, pressure gate push-out forces, and warning labels and instructions. The current voluntary standard is ASTM F1004–19, which was approved on June 1, 2019.

B. Description of the Current Voluntary Standard—ASTM F1004–19

ASTM F1004–19 includes the following key provisions: Scope (section 1), Terminology (section 3), General Requirements (section 5), Perfomance Requirements (section 6), Test Methods (section 7), Marking and Labeling (section 8), and Instructional Literature (section 9).

Scope. This section states the scope of the standard, and includes products known as expansion gates and expandable enclosures, or by any other name, and that are intended for young children age 6 months through 24 months. ASTM has stated that the standard applies to all children's gates, including non-expandable, fixed-sized gates and enclosures.

Terminology. This section provides definitions of terms specific to the standard.

General Requirements. This section addresses numerous hazards with several general requirements, most of which are also found in the other ASTM juvenile product standards. ASTM F1004–19 has requirements to address the following safety issues common to many juvenile products. The general requirements included in this section address:

- Wood parts;
- Screws;
- Sharp edges or points;
- Small parts;
- Openings;
- Exposed coil springs;
- Scissoring, shearing, and pinching;
- Labeling;
- Lead in paint; and
- Protective components.

Performance Requirements and Test Methods. These sections contain performance requirements specific to children's gates and enclosures and the test methods that must be used to assess conformity with such requirements. These requirements include:

- *Completely bounded openings:* Openings within the gate or enclosure, and completely bounded openings between the gate and the test fixture, shall not permit the complete passage of the small torso probe when it is pushed into the opening with a 25-pound force. This requirement is intended to address incidents where children were found with their heads entrapped after having pushed their way into gaps created between soft or flexible gate and enclosure components, and between the gate and the sides of passageway to be blocked off, *e.g.,* door frame or wall.
- *Height of sides:* The vertical distance from the floor to the lowest point of the uppermost surface shall not be less than 22 inches when measured from the floor. The requirement is intended to prevent intended occupants from being able to lean over, and then tumble over the top of the gate.
- *Vertical strength:* After a 45-pound force is exerted downward along the uppermost top rail, edge, or framing component, gates and enclosures must not fracture, disengage, fold nor have a deflection that leaves the lowest point of the top rail below 22 inches from the ground. For gates, the 45-pound vertical test force is applied five times to the mid-point of the horizontal top rail, surface or edge of each gate (or each of the top points of a gate that doesn't have a horizontal top edge). This test is carried out with the gate installed at both the maximum and minimum opening widths recommended by the manufacturer. For enclosures, the 45-pound force is applied to every other uppermost rail, surface, or edge and every other top joint of the enclosure. This requirement is intended to check that gates and enclosures retain their intended occupants even when children hang from or attempt to climb up the gates.
- *Bottom spacing:* The space between the floor and the bottom edge of an enclosure or gate shall not permit the complete passage of the small torso probe when it is pushed into the opening with a 25-pound force. This requirement is intended to address incidents where children were found with their heads entrapped after having

pushed their way, feet first, into gaps created between the gate and the floor.

• *Configuration of uppermost edge:* Partially bounded openings at any point in the uppermost edge of a gate or enclosure that is greater than 1.5 inches in width and more than 0.64 inches in depth must not allow simultaneous contact between more than one surface on opposite sides of a specified test template. The template was dimensioned so as to screen out non-hazardous openings with angles that are either too narrow to admit the smallest user's neck, or too wide to entrap the largest user's head. This requirement is intended to address head/neck entrapment incidents reported in the ''V'' shaped openings common in older, ''accordion style'' gates.

• *Latching/locking and hinge mechanisms:* This hardware durability test requires egress panels on gates and enclosures to be cycled through their fully open and closed positions 2,000 times. Pressure gates without egress panels are cycled through installation and removal 550 times. The 2,000 cycles tests the durability of gates or enclosures having egress panels which are expected to be operated twice a day through the lifetime of the product. Pressure gates without egress panels are intended to be installed in locations not accessed as frequently, and thus, are tested through a reduced 550 cycle test. This pre-conditioning test is intended to address incidents involving failures of latches, hinges, and hardware.

• *Automatic closing system:* Immediately following the cyclic preconditioning test, an egress panel marketed to have an automatic closing feature must continue to automatically close when opened to a width of 8 inches as well as when it is opened to its maximum opening width. This requirement is intended to check that a gate fully closes and locks as it is expected and advertised to do, thereby reducing the likelihood of an occupant accessing potentially hazardous conditions on the other side of an unintentionally unsecured gate.

• *Push-out force strength:* Five test locations are specified for this test: the four corners of the gate as well as the center. A horizontal push-out force is applied five times to each of the test locations and the maximum force applied before the gate pushes out of the test fixture is recorded and averaged for each test location (up to a maximum of 45 lb). The maximum force of 45 lb was selected because it simulates the effects of the largest intended occupant's weight. The average push-out force shall exceed 30 lb in all five test locations (and each individual force shall exceed 20 lb.) This requirement is intended to prevent the intended occupant from being able to dislodge the gate and gain access to a hazardous area the gate was meant to protect them from.

• *Locking devices:* Locking devices shall meet one of two conditions: (1) If the lock is a single-action latching device, the release mechanism must require a minimum force of 10 lb to activate and open the gate, or else (2) the lock must have a double action release mechanism. This requirement is intended to prevent the intended occupant being contained by the gate from being able to operate the locking mechanism.

• *Toys:* Toy accessories shall not be attached to, or sold with, a gate. Toy accessories attached to, removable from, or sold with an enclosure, shall meet applicable requirements of specification ASTM F963 ''*Consumer Safety Specification for Toy Safety*.''

• *Slat Strength:* This test verifies that no wood or metal vertical members (slats) completely break or either end of the slats completely separate from the gate or enclosure when a force of 45 pounds is applied horizontally. The test is conducted on 25 percent of all gate slats, excluding adjacent slats. This requirement is intended to check that gates and enclosures retain their structural integrity when children push or pull on the gate or enclosure slats.

• *Label testing:* Paper and non-paper labels (excluding labels attached by a seam) shall not liberate without the aid of tools or solvents. Paper or non-paper attached by a seam shall not liberate when subjected to a 15-lb pull force.

Warning, Labeling and Instructions. These provisions specify the marking, labeling and instructional literature requirements that must appear on or with each gate or enclosure.

• All gates and enclosures must include warnings on the product about the risk of serious injury or death when a product is not securely installed, must warn the consumer to never use the gate with a child who is able to climb over or dislodge the gate, and to never use the gate to prevent access to a pool.

• Pressure-mounted gates with a single-action locking mechanism on one side of the gate must include the following warning: Install with this side AWAY from child.

• Enclosures with locking or latching mechanisms must include the following warnings: Use only with the [locking/latching] mechanism securely engaged.

• Gates that do not pass the push-out test requirements must include the following warning on the product: You MUST install [wall cups] to keep gate in place. Without [wall cups] child can push out and escape.

These warnings are also required on the retail packaging unless they are visible in their entirety to consumers on the gate or enclosure at point of purchase.

VI. Adequacy of ASTM F1004–19 Requirements

The Commission concludes that the current voluntary standard, ASTM F1004–19, sufficiently addresses many of the general hazards associated with the use of children's gates and enclosures, such as wood parts, sharp points, small parts, lead in paint, scissoring, shearing, pinching, openings, exposed coil springs, locking and latching, and protective components.

In addition to the general requirements, ASTM F1004–19 contains performance requirements and test methods specific to gates and enclosures. The Commission determines that the current voluntary standard addresses the primary hazard patterns identified in the incident data. This section discusses the hazard patterns that account for the reported incidents and injuries and how the current voluntary standard addresses each. To assess the adequacy of ASTM F1004–19, CPSC staff considered all 436 reported incidents (19 fatal and 417 nonfatal) to identify hazard patterns associated with children's gates and enclosures.

A. Hardware Issues

This hazard is associated with 163 incidents (37%). The CPSC incident data show that hardware failures, (*e.g.,* broken hinges, locks, and mounting brackets) led to contusions, lacerations, head injuries, and fractures. To identify gates and enclosures that have hardware issues, such as those found in the incident data, ASTM F1004–19 provides a latching/locking and hinge performance test that cycles gates through 2,000 complete ''open and closing'' cycles and 550 installation/removal cycles for pressure gates without egress panels. The Commission concludes that this performance requirement adequately addresses the hazard pattern associated with hardware failures.

B. Slat Problems

This hazard is associated with 107 incidents (25%). The CPSC incident data show that problems occurred when slats broke or detached from gates or enclosures, resulting in contusions and lacerations. The ASTM F1004–19 standard includes a performance requirement that slats must withstand a 45-pound force, which is the pulling

force of the largest intended occupant. The Commission concludes that this performance requirement adequately addresses the hazard pattern associated with slat failures.

C. Material and Finish

This hazard is associated with 50 incident reports (11%). The CPSC incident data show that problems occurred with small parts breaking free to become potential choking hazards; splintering wood, or welding, sharp edges, protrusions, rails bending out of shape; fabric/mesh panels sagging, and poor quality stitching on fabric panels. ASTM F1004–19 (General Requirements) contains many requirements that address these issues, such as sharp points or edge, small parts, and bans on the use of transverse/lateral joints in all wood components. ASTM F1004–19 also tests openings within gates or enclosures and completely bounded openings, as well as bottom spacing between the bottom of the gate or enclosure and the floor, which also help reduce issues with rails or flexible barrier materials bending out of shape. The Commission concludes that these performance requirements adequately address the hazard pattern associated with material and finish failures.

D. Design Issues

This hazard is associated with 42 incident reports (10%). The CPSC incident data show that problems occurred when an aspect of the design of the gate or enclosure failed, such as the opening size between slats or panels that allowed for entrapments, moving gate components causing scissoring or pinching issues, features that were able to be used as footholds, or sections that posed a trip hazard when the gate was in an opened position. ASTM F1004–19 contains several performance tests that specifically address entrapments in openings, including the completely bounded openings and bottom spacing tests. The general openings and scissoring, shearing, and pinching performance requirements also help address hazards related to openings. The Commission concludes that these performance requirements adequately address the hazard pattern associated with design issues.

E. Installation Problems

This hazard is associated with 20 incidents (5%). The CPSC incident data show that problems occurred when there were unclear instructions, mismatched dimensions between gates and the openings they were meant to fit into, and failure of the gate to remain upright in the opening. ASTM F1004–19 includes several provisions requiring that warnings, labeling, and instructions be easy to read and understand for proper installation of gates. In addition, ASTM F1004–19 provides that all gates must meet a 30 lbs of push-out force at five test locations.

The Commission agrees that the requirement to meet the 30-lb push-out force for all gates will improve children's safety, if the gate is installed correctly. The ASTM F1004–19 standard allows the use of mounting hardware or wall cups to meet the 30-lb push-out force requirement. Although the Commission determines that these provisions generally address the installation hazard patterns because they help clarify the requirements for proper installation, ASTM may be able to make improvements in the future to increase the consumer's awareness of the importance of proper installation of pressure-mounted gates.

Currently, the ASTM standard does not require pressure-mounted gates to provide the consumer with reliable feedback indicating that the gate has been installed correctly with enough side pressure to prevent a child from knocking it over. Manufacturers' instructions for some pressure-mounted gates provide little or no clear direction for consumers to know when the gate is installed correctly or will stay in place after several uses. Some of the designs require the user to push or pull on the gate to have a *feel* that the gate is properly installed (*e.g.* ''turn the nut . . . until the gate is snug''; ''turn the hand wheels until firm tension is achieved''); or make precise measurements for installation (*e.g.,* the distance between the gate frame and the wall to ensure both sides are equally spaced). These tasks are often subjective or cumbersome to guarantee proper installation.

CPSC staff intends to collaborate with ASTM in the future to improve the installation of pressure-mounted gates with the use of visual side-pressure indicators. Because pressure-mounted gates rely on friction force to resist a push-out force applied to the gate, side-pressure force is a key component to the gate performance. The more side-pressure force exerted by the gate to the wall/door opening, the more resistance to push-out forces. Effective visual side-pressure indicators would make it more likely that test technicians install the gate with sufficient side-force pressure and could provide consistency and validity to the test results. Equally important, visual side-pressure indicators could provide a way for consumers to know when their gate is installed with sufficient side pressure, particularly as they are not expected to have or use force gauges during installation. Visual indicators may also help inform consumers during the lifecycle of the product, when readjustment is necessary. Accordingly, the Commission seeks comment regarding the use and feasibility of visual side pressure indicators for pressure-mounted gates and whether such indicators would be effective in addressing installation failures.

F. Miscellaneous

Seven of the incidents (2%) raised miscellaneous issues, including three complaints about an ineffective recall remedy, one complaint about poor product packaging, and three consumer concerns about the safety of a specific design. The issues are not addressed in ASTM 1004–19, but they do not relate directly to improving the safety of gates or enclosures. Accordingly, the Commission does not recommend changes to the ASTM standard to address these issues.

G. Enclosure Instability

A few (<1%) incident reports came from consumers who described problems with flimsy or unstable enclosures. ASTM F1004–19 contains several requirements that help address the product durability issues reported in these enclosure incidents. The vertical strength requirement was expanded to test not only the joints between the enclosure panels, but also to test the top rails of the panels themselves. Additionally, the cyclic locking/latching tests whether the hardware in these products is durable and capable of withstanding regular use. Many of the general requirements, such as those concerning sharp edges, small parts, wood parts, and protective components, also help to address issues in this category. The Commission concludes that these performance requirements are adequate to address the hazard pattern associated with unstable enclosures.

H. Warnings and Instructional Literature

ASTM F1004–19 includes updated warning format requirements that are aligned with ASTM's Ad Hoc Wording Task Group recommendations. The Ad Hoc Task Group harmonized the wording and language used across nursery product standards. This task group also developed recommendations for harmonizing warning formats across standards. CPSC staff has worked closely with this group to develop ad hoc recommendations that are based largely on the requirements of the ANSI

Z535.4, *American National Standard for Product Safety Signs and Labels.*

The Commission expects that the ASTM F1004–19's labeling requirements will reduce inconsistencies currently seen on gates and enclosures, and will address numerous warning format issues to capture consumer attention better, improve readability, and increase hazard perception and avoidance behavior. In addition, the Commission determines that the instructional literature, also aligned with the Ad Hoc Task Group's wording design or form requirements, improves the required warning statements in the instructions. However, the Commission believes that additional collaboration with ASTM regarding the placement and wording of the warning label on gates for wall cups on pressure-mounted gates may improve consumers' awareness of the importance of proper wall cup installation.

ASTM F1004–19 currently requires a warning statement about the hazard of installing gates without wall cups. This warning statement is included within the general warning label; however, the label can have as many as six different required messages in one location:

As discussed, there is no objective measure for consumers to confirm the correct installation of the gate. CPSC staff intends to work with ASTM to improve the installation of pressure-mounted gates with the use of visual side-pressure indicators to provide an objective way for test technicians and consumers to know when their gate is installed with sufficient side pressure. In addition, although some pressure-gate manufacturers generally instruct consumers that wall cups are required if they need to install a pressure-mounted gate at the top of the stairs, consumers may not be aware that wall cups need to be installed if the gate is used in other locations, or that wall cups need to be reinstalled if the gate is moved to a different location. Additional collaboration with ASTM is needed to assess whether a wall cup warning label statement that is separate and distinct from the general warning label, and placed conspicuously on the top rail of the gate, may increase the likelihood of the consumer noticing, comprehending, and complying with the warning. Accordingly, the Commission seeks comment on whether the placement and wording of the wall cup warning should be modified, and whether such changes would be effective in addressing installation failures.

VII. International Standards

CPSC staff reviewed the performance requirements of the current ASTM standard, ASTM F1004–19, to the performance requirements of other standards that address children's gates and enclosures including:

- The European Standard, EN 1930:2011/A1, Child use and care articles—Safety barriers—Safety requirements and test methods (EN standard); and
- The Canadian regulation, SOR/2016–179, Expansion Gates and Expandable Enclosures Regulations (SOR standard).

CPSC staff determined that, for most of the relevant performance requirements, the SOR standard refers to an older version of ASTM F1004, published in 1986 (ASTM F1004–86), which has been superseded. Staff compared the applicable performance requirements of the SOR standard and EN standard to the current ASTM F1004 standard, ASTM F1004–19, including the following requirements: Side height and vertical load, footholds, head entrapment, latch/oock conditioning test and automatic closing system, scissoring, shearing, and pinching, entanglement by protruding parts, neck entrapment in V shaped opening, packaging, construction and structural integrity, push-out test, hazardous materials, flammability, and protective components. CPSC staff's review showed that, for all of the requirements, the current ASTM F1004–19 standard is adequate, or more stringent than, the international standards in addressing the hazards identified in incidents associated with children's gates and enclosures.

VIII. Incorporation by Reference

The Commission is proposing to incorporate by reference, ASTM F1004–19, without change. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that, for a proposed rule, agencies discuss in the preamble to the NPR ways that the materials the agency proposes to incorporate by reference are reasonably available to interested persons, or explain how the agency worked to make the materials reasonably available. In addition, the preamble to the proposed rule must summarize the material. 1 CFR 51.5(a).

In accordance with the OFR's requirements, section V.B of this preamble summarizes the provisions of ASTM F1004–19 that the Commission proposes to incorporate by reference. ASTM F1004–19 is copyrighted. By permission of ASTM, the standard can be viewed as a read-only document during the comment period on this NPR, at: *http://www.astm.org/cpsc.htm.* Interested persons may also purchase a copy of ASTM F1004–19 from ASTM, through its website (*http://www.astm.org*), or by mail from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org.*

Alternatively, interested parties may inspect a copy of the standard at CPSC's Division of the Secretariat.

IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule (5 U.S.C 553(d)). The Commission proposes that the standard become effective 6 months after publication of a final rule in the **Federal Register**. Barring evidence to the contrary, the Commission generally considers 6 months to be sufficient time for suppliers to come into compliance with a new standard, and this is typical for other CPSIA section 104 rules. Six months is also the period that the Juvenile Products Manufacturers Association (JPMA) typically allows for products in their certification program to shift to a new standard once that new standard is published. The Commission is not aware of any information suggesting that 6 months is not an appropriate time frame for suppliers to come into compliance. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this time frame. The Commission believes that most firms should be able to comply with the 6-month time frame, but asks for comments, particularly from small businesses, regarding the feasibility of complying with the proposed 6-month effective date. We also propose a 6-month effective date to the amendment to part 1112.

X. Assessment of Small Business Impact

A. Introduction

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for their potential economic impact on small entities, including small businesses. Section 603 of the RFA requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make it available to the public for comment when the general notice of proposed rulemaking (NPR) is published, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Based on current information, the Commission cannot rule out that incorporating by reference ASTM F1004–19 as a mandatory CPSC safety standard would have a significant impact on a substantial number of small entities involved in the manufacturing or importing of children's gates and enclosures,

B. Small Entities to Which the Proposed Rule Would Apply

CPSC staff identified 113 firms supplying gates and enclosures to the U.S. market. The vast majority of suppliers are domestic (109 firms). The U.S. Small Business Administration (SBA) size guidelines identify any manufacturer as ''small'' if it employs fewer than 500 employees. Out of 113 firms, 83 appear to be very small, home-based domestic manufacturers.[7] They typically have only one or two gates in their product line and supply few other products. They generally also have low sales volumes. None of the home-based manufacturers appears to supply enclosures.

An additional 30 firms that are larger than the home-based suppliers supply gates and/or enclosures; 26 of the 30 are domestic. These firms include manufacturers and importers. Twenty-three of the 30 firms, although not as small as the home-based suppliers, are still small domestic entities, based on SBA guidelines for the number of employees in their North American Industry Classification System (NAICS) codes. These firms typically have eight to nine gate models in their product lines and have much larger sales volumes than the home-based suppliers. Of the 23 small domestic suppliers, 13 supply only gates, six supply only enclosures, and four firms supply gates and enclosures. The remaining four firms are foreign manufacturers.

C. Costs of Proposed Rule To Be Incurred by Small Manufacturers

CPSC staff is aware of 106 small, domestic firms currently marketing gates and enclosures in the United States. It appears unlikely that there would be a significant economic impact on the 17 suppliers (12 manufacturers and 5 importers) of compliant gates and enclosures. These suppliers are already compliant with the current ASTM voluntary standard (ASTM F1004–18) and are likely to remain compliant with the new standard. However, based upon current information, the Commission cannot rule out a significant economic impact on six suppliers of noncompliant gates and enclosures and 83 home-based suppliers of gates.

For the three domestic manufacturers of gates and enclosures that do not comply with the voluntary standard, the cost of bringing products into compliance may be significant.[8] Several firms indicate that the cost of a redesign could be between $400,000 and $1 million, depending on the materials used to construct the product. The changes in the requirements for instruction manuals and labeling are not expected to be significant for these firms. Typically, these firms have already developed and provided warning labels and instruction manuals with their products. For two of the three small manufacturers of noncompliant gates, third party testing costs are not expected to exceed 1 percent of revenue because they have high revenue levels and few gate models in their product lines. The revenue level for the third firm is unknown.

For the three domestic importers/wholesalers that supply gates and enclosures that do not comply with the voluntary standard, the cost of ensuring compliance with the proposed standard could be significant, depending upon the extent of the changes required, and the response of their supplying firms. Finding another supplier, or dropping the product line entirely, are options for importers/wholesalers if their existing supplier does not make the necessary product changes. The impact on a given firm will depend on the revenue generated by the product line, the cost of finding an alternative supplier, and the variety of other products in their product line. Third party testing costs may also have a significant impact. However, CPSC staff was unable to find revenue information for two firms, and testing costs could exceed 1 percent of revenue for the third firm.

Additionally, it is likely that all 83 of the very small, home-based suppliers identified would be significantly impacted, regardless of whether they require modifications to meet the performance requirements of the proposed standard. Most of the firms are likely to leave the market because their revenue from the sale of gates does not appear to be sufficiently large to justify third party testing costs and the cost of developing warning labels and instructional literature if these have not been provided before. If confronted by these costs, most of these very small, home-based manufacturers could stop selling gates or go out of business.

The Commission seeks comments on the changes that may be required to meet the voluntary standard, ASTM F1004–19, and in particular, whether redesign would be necessary, and what

[7] These suppliers were identified online, and staff believes that there may be additional home-based suppliers operating in the gates market on a very small scale (possibly including some without an online presence).

[8] Generally, we believe that impacts of less than one percent of a firm's revenue are unlikely to be significant. We cannot rule out the possibility that impacts of greater than one percent of revenue could be significant for some firms in some cases.

the associated costs are and the time required to bring the products into compliance. The Commission also seeks comments from individuals/firms familiar with various gates made by home-based suppliers who can provide additional information on the different styles of gates provided by home-based versus non-home-based suppliers. The Commission is particularly interested in how these firms are likely to respond to the proposed rule and the costs and time frame that would be required to modify any product, if applicable. Additionally, the Commission requests information on the number of home-based suppliers, and on the significance of gates sales specifically, to their total revenue.

D. Alternatives

The Commission is proposing a 6-month effective date for the rule. A later effective date could reduce the economic impact on firms in two ways. First, firms would be less likely to experience a lapse in production/importation, which could result if they are unable to comply and have their products tested by a third party within the required timeframe. Second, firms could spread costs over a longer time period, thereby reducing their annual costs, as well as the present value of their total costs. Suppliers interviewed for the rulemaking indicated that 12–18 months might be necessary if a complete product redesign were required. Additional time might also be necessary for home-based suppliers that currently are not providing warning labels or instructional materials with their products to develop them.

The Commission seeks comments on the impact of the proposed rule on small manufacturers and importers, in general, as well as alternative effective dates, or any other alternatives that could mitigate the impact on small firms. When suggesting an alternative, please provide specific information on the alternative, and the extent to which it could reduce the impact.

XI. Environmental Considerations

The CPSC's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. 16 CFR part 1021. Those regulations state that certain categories of CPSC actions normally have ''little or no potential for affecting the human environment,'' and therefore, do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c)(1). Rules or safety standards that provide design or performance requirements for products are among the listed exempt actions. Thus, the proposed rule falls within the categorical exemption.

XII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). Under 44 U.S.C. 3507(a)(1)(D), an agency must publish the following information:

- A title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

In accordance with this requirement, the CPSC provides the following information:

Title: Safety Standard for Gates and Enclosures

Description: The proposed rule would require each gates and enclosure to comply with ASTM F1004–19, *Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures,* with no modifications. Sections 8 and 9 of ASTM F1004–19 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import gates or enclosures.

Estimated Burden: We estimate the burden of this collection of information under 16 CFR part 1239 as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Type of supplier	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
Labeling	Home-based manufacturers	83	2	166	7	1,162
	Other Suppliers	30	8	240	1	240
Labeling Total						1,402
Instructional literature	Home-based manufacturers	83	2	50	100	8,300
Total Burden						9,702

Our estimate is based on the following:

Two groups of firms that supply gates and enclosures to the U.S. market may need to modify their existing warning labels. The first are very small, home-based manufacturers (83), who may not currently have warning labels on their gates (CPSC staff did not identify any home-based suppliers of enclosures). CPSC staff estimates that it would take home-based manufacturers approximately 15 hours to develop a new label; this translates to approximately 7 hours per response for this group of suppliers. Therefore, the total burden hours for very small, home-based manufacturers is 7 hours per model × 83 entities × 2 models per entity = 1,162 hours.

The second group of firms supplying gates and enclosures to the U.S. market that may need to make some modifications to their existing warning labels are non-home-based manufacturers and importers (30). These are also mostly small domestic firms, but are not home-based and do not operate at the low production volume of the home-based firms. For this second group, all of whom have existing warning labels on their products and are used to working with warning labels on a variety of other products, we estimate that the time required to make any modifications now or in the future

would be about 1 hour per model. Based on an evaluation of supplier product lines, each entity supplies an average of 8 models of gates and/or enclosures; therefore, the estimated burden associated with labels is 1 hours per model × 30 entities × 8 models per entity = 240 hours.

The total burden hours attributable to warning labels is the sum of the burden hours for both groups of entities: Very small home-based manufacturers (1,162 burden hours) + non-home-based manufacturers and importers (240 burden hours) = 1,402 burden hours. We estimate the hourly compensation for the time required to create and update labels is $34.50 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' December 2018, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost to industry associated with the labeling requirements is $48,369 ($34.50 per hour × 1,402 hours = $48,369). No operating, maintenance, or capital costs are associated with the collection.

ASTM F1004–19 also requires instructions to be supplied with the product. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' As with the warning labels, the reporting burden of this requirement differs for the two groups.

Many of the home-based gate manufacturers supplying on a very small scale may provide either no instructions or only limited instructions with their products as part of their ''normal course of activities.'' CPSC staff estimates that each home-based entity supplying homemade gates and/or enclosures might require 50 hours to develop an instruction manual to accompany their products. Although the number of home-based suppliers of gates and/or enclosures is likely to vary substantially over time, based on CPSC staff's review of the marketplace, currently, there are approximately 83 home-based suppliers of gates and/or enclosures operating in the U.S. market. These firms typically supply two gates on average. Therefore, the costs of designing an instruction manual for these firms could be as high as $286,350 (50 hours per model × 83 entities × 2 models per entity = 8,300 hours × $34.50 per hour = $286,350). Not all firms would incur these costs every year, but new firms that enter the market would and this may be a highly fluctuating market.

The non-home-based manufacturers and importers likely are providing user instruction manuals already with their products, under the normal course of their activities. Therefore, for these entities, there are no burden hours associated with providing instructions.

Based on this analysis, the proposed standard for gates and enclosures would impose an estimated total burden to industry of 9,702 hours at a cost of $334,719 annually.

In compliance with the PRA (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by August 7, 2019, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- The estimated burden hours required for very small, home-based manufacturers to modify (or, in some cases, create) warning labels;
- the estimated burden hours required for very small, home-based manufacturers to modify (or, in some cases, create) instruction manuals;
- whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and
- the estimated burden hours associated with label modification, including any alternative estimates, for both home-based and non-home-based suppliers.

XIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules,'' thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

XIV. Certification and Notice of Requirements (NOR)

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the CPSC, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires that certification of children's products subject to a children's product safety rule be based on testing conducted by a CPSC-accepted third party conformity assessment body. Section 14(a)(3) of the CPSA requires the Commission to publish a notice of requirements (NOR) for the accreditation of third party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The proposed rule for 16 CFR part 1239, ''Safety Standard for Gates and Enclosures,'' when issued as a final rule, will be a children's product safety rule that requires the issuance of an NOR.

The CPSC published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies,* 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112 (referred to here as Part 1112). This rule took effect on June 10, 2013. Part 1112 establishes requirements for accreditation of third party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with Section 14(a)(2) of the CPSA. The final rule also codifies all of the NORs that the CPSC had published, to date. All new NORs, such as the gates and enclosures standard, require an amendment to part 1112. Accordingly, in this document, we propose to amend part 1112 to include the gates and enclosures standard, along with the other children's product safety rules for which the CPSC has issued NORs.

Test laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for gates and enclosures would be required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, it can apply to the CPSC to have 16 CFR part 1239, *Safety Standard for Gates and Enclosures,* included in its scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC website at: *www.cpsc.gov/labsearch.*

In connection with the part 1112 rulemaking, CPSC staff conducted an analysis of the potential impacts on small entities of the proposed rule establishing accreditation requirements, 77 FR 31086, 31123–26 (May 24, 2012), as required by the RFA and prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA concluded that the requirements would not have a significant adverse impact on a substantial number of small laboratories because no requirements are imposed on laboratories that do not intend to provide third party testing services under section 14(a)(2) of the CPSA. The only laboratories that are expected to provide such services are those that anticipate receiving sufficient revenue from providing the mandated testing to justify accepting the requirements as a business decision. Laboratories that do not expect to receive sufficient revenue from these services to justify accepting these requirements would not likely pursue accreditation for this purpose. Similarly, amending the part 1112 rule to include the NOR for gates and enclosures would not have a significant adverse impact on small laboratories. Moreover, based upon the number of laboratories in the United States that have applied for CPSC acceptance of the accreditation to test for conformance to other juvenile product standards, we expect that only a few laboratories will seek CPSC acceptance of their accreditation to test for conformance with the gates and enclosures standard. Most of these laboratories will have already been accredited to test for conformance to other juvenile product standards and the only costs to them would be the cost of adding the gates and enclosures standard to their scope of accreditation. As a consequence, the Commission certifies that the proposed notice requirements for the gates and enclosures standard will not have a significant impact on a substantial number of small entities.

XIV. Request for Comments

This proposed rule begins a rulemaking proceeding under section 104(b) of the CPSIA for the Commission to issue a consumer product safety standard for gates and enclosures, and to amend part 1112 to add gates and enclosures to the list of children's product safety rules for which the CPSC has issued an NOR. In addition to requests for specific comments elsewhere in this NPR, the Commission invites all interested persons to submit comments on any aspect of the proposed rule.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1239

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend parts 1112 and 1239 of Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: 15 U.S.C. 2063; Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008).

■ 2. Amend § 1112.15 by adding paragraph (b)(49) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) * * *

(49) 16 CFR part 1239, Safety Standard for Gates and Enclosures.

* * * * *

■ 3. Add part 1239 to read as follows:

PART 1239—SAFETY STANDARD FOR GATES AND ENCLOSURES

Sec.

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a).

§ 1239.1 Scope.

This part establishes a consumer product safety standard for gates and enclosures.

§ 1239.2 Requirements for gates and enclosures.

Each gate and enclosure must comply with all applicable provisions of ASTM F1004–19, Standard Consumer Safety Specification for Expansion Gates and Expandable Enclosures, approved on June 1, 2019. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *www.astm.org/cpsc.htm.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–14295 Filed 7–5–19; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0246; FRL–9996–06–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Amendments to the Control of Emissions of Volatile Organic Compounds From Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve part of a state implementation plan (SIP) revision submitted by the District of Columbia (the District) on August 29, 2018. The part of the August 29, 2018 SIP revision being proposed for approval is an update to the 2002 Mobile Equipment Repair and

Refinishing (MERR) model rule to incorporate the Ozone Transport Commission's (OTC) 2009 Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations regulations (MVMERR) model rule, which was adopted by the District in 2016. The MVMERR rules establish volatile organic compounds (VOC) content limits for coating and cleaning solvents used in vehicle refinishing and standards for coating application, work practices, monitoring, and recordkeeping. The remaining part of the August 29, 2018 SIP revision addressed the District's VOC Reasonable Available Control Technology (RACT) requirements for the 2008 ozone national ambient air quality standards (NAAQS). EPA will address the VOC RACT portion of the SIP revision in a separate rulemaking action. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 7, 2019.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2019–0246 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, Planning & Implementation Branch (3AD30) Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2036. Mr. Gregory A. Becoat can also be reached via electronic mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 29, 2018, the District of Columbia Department of Energy and Environment (DOEE) submitted a SIP revision for EPA approval which included the District's 2016 update to its 2002 MERR rule, found at Title 20 (Environment), District Municipal Regulations (DCMR) Subtitle A (Air Quality), Chapter 7—Volatile Organic Compounds. The District's 2016 update revised its existing, SIP-approved 2002 MERR rule to include the OTC's 2009 MVMERR model rule. The DOEE's August 29, 2018 SIP revision also addressed all the VOC requirements of RACT set forth by the CAA for the 2008 8-hour ozone NAAQS (the 2008 VOC RACT Submission). The portion addressing the 2008 VOC RACT requirements will be addressed in a separate rulemaking notice.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and nitrogen oxides (NO_X) in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas.

Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District.[1] The District is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. In December 1999, EPA identified emission reduction shortfalls in several severe 1-hour ozone nonattainment areas, including those located in the OTR. As a result, the OTC developed model rules for a number of source categories. One of the model rules was to reduce VOC emissions from automotive coatings and cleaning solvents associated with non-assembly line refinishing or recoating of motor vehicles, mobile equipment, and their associated parts and components. The 2002 MERR model rule was originally approved by EPA into the District's SIP on December 23, 2004 (69 FR 76857) as part of a regional effort to attain and maintain the 1-hour ozone NAAQS. The 2009 MVMERR Model Rule is a revision of the 2002 MERR Model Rule developed by the OTC. The California Air Resources Board (CARB) Suggested Control Measure (SCM) for Automotive Coatings, published October 2005, formed the basis for the revisions to the 2009 MVMERR Model Rule.

B. Source Description

Automobile refinishing includes the application of coatings following the manufacture of original equipment. ''Automobile'' or ''vehicle'' in this category refers to passenger cars, trucks, vans, motorcycles, and other mobile equipment capable of being driven on the highway. Automobile refinishing work typically consists of structural repair, surface preparation, and painting, and includes operations in auto body repair/paint shops, production auto body paint shops, new car dealer repair/paint shops, fleet operator repair/paint shops, and custom-made car fabrication facilities. The steps involved in automobile refinishing include surface preparation, coating applications, and spray equipment. VOC emissions result from the evaporation of solvents during each of these processes and can be controlled through the use of compliant coatings and solvents, the use of application equipment with increased transfer efficiency, and stringent work practice standards.

The main categories of coatings are primers and topcoats. The primer category consists of pretreatment wash primers, primers, primer surfacers, and primer sealer. Topcoats are applied over the primer coats and provide the final color to the refinished area. Primers and coatings can be classified as lacquer, enamel, or urethane coatings. Each coating differs in its chemistry, durability, and VOC content. Some additives and specialty coatings are necessary for unusual performance requirements and are used in relatively small amounts to improve desirable properties. Additives and special coatings include adhesion promoters, uniform refinish blenders, elastomeric materials for flexible plastic parts, gloss flatteners, and anti-glare/safety coatings. For additional information, see EPA's ''Alternative Control Techniques (ACT) Document: Automobile Body Refinishing'' (EPA–453/R–94–031, April 1994).

II. Summary of SIP Revision

On August 29, 2018, the DOEE submitted a SIP revision which included the District's 2016 update to its 2002, SIP-approved MERR rule to incorporate the OTC's 2009 Model Rule for Motor Vehicle and Mobile Equipment Non-Assembly Line Coating

[1] Only a portion of the Commonwealth of Virginia is included in the OTR.

Operations Regulations. A redline/strikeout version showing the changes is included in the docket for this action. If approved, the SIP revision would make the District's 2016 amended rule federally enforceable. The OTC's 2009 MVMERR model rule was established to reduce VOC emissions from automotive coatings and cleaning solvents associated with the non-assembly line refinishing or recoating of motor vehicles, mobile equipment, and their associated parts and components.

The District submitted amendments to Sections 714—Control Techniques, Section 718—Mobile Equipment Repair and Refinishing, and Section 799—Definitions, in order to implement the OTC's 2009 MVMERR model rule. Affected sources include: Auto body and repair facilities, fleet operator repair and paint facilities, new and used auto dealer repair and paint facilities, and after-market auto customizing and detailing facilities located throughout the District; manufacturers, suppliers, and distributors of coatings and cleaning solvents intended for use and application to motor vehicles, mobile equipment, and associated components within the District; and manufacturers, suppliers, and distributors of application equipment and materials storage such as spray booths, spray guns, and sealed containers for cleaning rags for use within the District. The District's amendments establish revised VOC content limits, as set forth in Table 1, for automotive coatings and cleaning solvents used in the preparation, application, and drying phases of vehicle refinishing. The District's amendments also establish coating application standards, work practices, operator training standards, and compliance and recordkeeping standards. Table 1 lists the revised VOC limits adopted by the District in 2016.

TABLE 1—ALLOWABLE VOC CONTENT IN AUTOMOTIVE COATINGS FOR MOTOR VEHICLE AND MOBILE EQUIPMENT NON-ASSEMBLY LINE REFINISHING AND RECOATING

Coating category	VOC regulatory limit as applied*	
	(Pounds per gallon)	(Grams per liter)
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60
Truck bed liner coating	1.7	200
Underbody coating	3.6	430
Uniform finish coating	4.5	540

* VOC regulatory limit as applied = Weight of VOC per Volume of Coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents).

Table 2 sets forth the old VOC limits from the 2002 MERR rule that were previously adopted into the District's regulations and approved as SIP revisions by EPA. The revised rule allows automotive refinishing facilities in operation as of February 9, 2016 to use automotive coatings complying with Table II and existing stocks of solvents until March 1, 2017.

TABLE 2—ALTERNATIVE ALLOWABLE CONTENT OF VOCS IN AUTOMOTIVE COATINGS FOR MOTOR VEHICLE AND MOBILE EQUIPMENT NON-ASSEMBLY LINE REFINISHING AND RECOATING

Coating category	VOC regulatory limit as applied*	
	(Pounds per gallon)	(Grams per liter)
Automotive pretreatment primer	6.5	780
Automotive primer-surfacer	4.8	575
Automotive primer-sealer	4.6	550
Single stage-topcoat	5.0	600
2 stage basecoat/clearcoat	5.0	600
3 or 4-stage basecoat/clearcoat	5.2	625
Automotive multicolored	5.7	680
Automotive specialty coating	7.0	840

** VOC regulatory limit as applied = Weight of VOC per Volume of Coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents).

III. Proposed Action

EPA has reviewed the District's updated Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations Regulations rule and is proposing to approve this rule as a SIP revision. EPA concludes that the District's updated MVMERR rule in 20 DCMR Sections 714.3(a)(1), 718, and 799 are consistent with the requirements and limits in the OTC's 2009 MVMERR model rule. EPA is

soliciting public comments on the issues discussed in this document relevant to the District's update of the 2002 MERR model rule to incorporate the OTC's 2009 MVMERR model rule. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to 20 DCMR Sections 714.3(a)(1), 718, and 799. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, the District's update to the 2002 MERR rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 24, 2019.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2019–14259 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0153; FRL–9995–58–Region 4]

Air Plan Approval; North Carolina: Amendments of Air Quality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ), through a letter dated March 21, 2018, readopting and amending air quality rules related to transportation conformity requirements in the State of North Carolina. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before August 7, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0153 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is (404) 562–9222 . She can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

EPA is proposing to approve a SIP revision submitted by DAQ, through a letter dated March 21, 2018, seeking to readopt and amend the air quality rules pertaining to transportation conformity in the North Carolina SIP.[1] North Carolina's SIP submission revises the following North Carolina regulations in 15A NCAC 2D Section .2000: Section .2001 *Purpose, Scope and Applicability,* Section .2002 *Definitions,* Section .2003 *Transportation Conformity*

[1] EPA received the official electronic version of the submittal on April 4, 2018. EPA has already taken action on the other North Carolina changes submitted through the cover letter dated March 21, 2018, in a separate action. *See* 84 FR 14308.

Determination, and Section .2005 *Memorandum of Agreement.*[2] The changes to these rules are discussed below in Section II of this proposed rulemaking.

II. Analysis of North Carolina's Submittal

North Carolina's General Statue (G.S.) 150B–21.3A, adopted by the State in 2013, requires state agencies to review existing rules every ten years. The State recently reviewed all air quality rules in 15A NCAC 02D, Air Pollution Control Requirements.[3] This proposed rulemaking pertains to a SIP revision that North Carolina provided to EPA for approval of changes to ''Section .2000—*Transportation Conformity.*'' [4] Section .2000—*Transportation Conformity* contains the following five rules: Section .2001 *Purpose, Scope and Applicability,* Section .2002 *Definitions,* Section .2003 *Transportation Conformity Determination,* Section .2004 *Determining Transportation-Related Emissions,*[5] and Section .2005 *Memorandum of Agreement.* EPA is proposing action on the following rules: Section .2001 *Purpose, Scope and Applicability,* Section .2002 *Definitions,* Section .2003 *Transportation Conformity Determination,* and Section .2005 *Memorandum of Agreement.* The changes to these rules are individually described below. If approved, none of these changes would alter the way that transportation conformity requirements are implemented in the State of North Carolina.

Section .2001 *Purpose, Scope and Applicability* is amended to revise the specific areas to which conformity requirements apply in the following manner: by removing counties and adding certain townships listed in paragraph (b); and by clarifying in paragraph (c) that transportation conformity requirements are applicable to *any* area that is designated nonattainment or has been previously designated nonattainment and since redesignated to attainment for the $PM_{2.5}$ and ozone NAAQS.[6]

Further, the changes remove provisions related to carbon monoxide areas, which were redesignated to attainment with 10-year maintenance plans effective November 7, 1994,[7] and September 8, 1995,[8] and previously demonstrated attainment (containing motor vehicle emissions budgets) through 2015.[9] As federal transportation conformity requirements no longer apply to the former carbon monoxide nonattainment areas in North Carolina,[10] the EPA preliminarily concludes that there are no emissions increases associated with this action.

The rule changes also provide that—in addition to stating that transportation conformity requirements apply for 20 years after an area is redesignated to attainment—transportation conformity requirements apply ''until the effective date of revocation of the conformity requirements for the NAAQS by EPA.'' Additionally, rule .2001 is amended to make non-substantive wording, punctuation and formatting changes.

After evaluation, EPA believes that the changes to North Carolina rule .2001, when taken together, provide the appropriate applicability for transportation conformity requirements, do not materially change the areas to which transportation conformity applies, and are consistent with the CAA requirements for applicable areas. EPA is proposing to approve the changes to rule .2001 because these changes do not alter the applicability for transportation conformity requirements in North Carolina nor do these changes conflict with the federal requirements for transportation conformity.[11]

Section .2002 *Definitions* is amended to remove the definition of consultation, and to make non-substantive wording, punctuation and formatting changes (for example, to include hyphens between the words regionally and significant). EPA is proposing to approve the changes to rule .2002 because these changes, including the deletion of the definition of consultation,[12] do not alter transportation conformity requirements for any applicable area in North Carolina nor do these changes conflict with the federal requirements for transportation conformity.

Section .2003 *Transportation Conformity Determination* is amended to update references to federal transportation conformity requirements from 40 CFR 93.109 through 93.119 as opposed to referencing the federal transportation conformity requirements from 40 CFR 93.109 through 93.118; [13] to clarify that written commitments to implement control measures must be obtained if a control measure is not included in either the transportation plan or the transportation improvement program; and to make non-substantive

[2] The table at 40 CFR 52.1770(c), identifying the North Carolina regulations approved into the SIP, labels each rule as a ''Sect.'' (*i.e.,* Section) under the column titled ''State citation.'' For consistency with the nomenclature used in the table, this notice uses the term ''Section'' when referring to individual North Carolina rules.

[3] *See* North Carolina's SIP submission, Background and Summary, at page I–1, available in the docket to this action.

[4] Transportation Conformity is required under section 176(c) of the CAA to ensure that federally-supported highway projects, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under 175A of the CAA, for transportation-related criteria pollutants including ozone, particulate matter, and carbon monoxide and nitrogen dioxide. EPA previously approved SIP revisions from North Carolina addressing transportation conformity requirements. *See* 67 FR 78983 (December 27, 2002) and 78 FR 78266 (December 26, 2013).

[5] North Carolina did not request EPA approval for Section .2004 *Determining Transportation-Related Emissions* as it was readopted without changes. *See* March 21, 2018, Letter from DAQ, available in the docket for this action.

[6] *See* April 9, 2019 email from Matthew Davis of DAQ to Jane Spann, Acting Chief for the Air Regulatory Management Section of the U.S. EPA Region 4 Office (April 9, 2019 email), available in the docket for this proposed rulemaking. The April 9, 2019 email explains DAQ's intent to cover all nonattainment and maintenance areas for ozone and $PM_{2.5}$ in paragraph (c), while retaining a specific list of current nonattainment townships in paragraph (b) based on stakeholder interest. With respect to NAAQS that are relevant for conformity purposes, EPA notes that North Carolina currently has areas designated for maintenance for ozone and $PM_{2.5}$ NAAQS.

[7] *See* 59 FR 48399 (September 21, 1994) (redesignating the Winston-Salem area in Forsyth County to attainment for the carbon monoxide NAAQS and approving the first 10-year maintenance plan for the Winston-Salem area).

[8] *See* 60 FR 39258 (August 2, 1995) (redesignating the Charlotte area in Mecklenburg County and the Raleigh-Durham area in Durham and Wake Counties to attainment for the carbon monoxide NAAQS and approving first 10-year maintenance plans for both areas).

[9] *See* 71 FR 14817 (March 24, 2006) (approving second 10-year maintenance plans through 2015 for the Winston-Salem, Charlotte, and Raleigh-Durham carbon monoxide areas).

[10] *See Transportation Conformity Guidance for Areas Reaching the End of the Maintenance Period,* October 2015, available at *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100KPP0.PDF?Dockey=P100KPP0.PDF.* In general, transportation conformity applies for a NAAQS during the CAA section 175A maintenance planning period, which is the later of 20 years after redesignation and approval of the first 10-year maintenance plan, or the last year of a motor vehicle emissions budget established in the second maintenance plan. Those dates were November 7, 2014 (Winston-Salem area), September 8, 2015 (Charlotte and Raleigh-Durham areas), and March 18, 2015 (last year of motor vehicle emissions budget for all three areas).

[11] *See, e.g.,* 40 CFR 51.390; 40 CFR part 93 subpart A; Transportation Conformity Guidance for the South Coast II Court Decision, dated November 2018, available at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100VQME.pdf.*

[12] EPA notes that consultation process requirement to comply with 40 CFR 93.105 were approved into the SIP within memoranda of agreements addressing transportation conformity. *See* 67 FR 78986 (December 27, 2002).

[13] As 40 CFR 93.119 contains provisions for areas without a motor vehicle emissions budget approved in the SIP, this provision is not required to be in the SIP and would be applicable to such areas absent its inclusion into the SIP. *See* 77 FR 14979 (March 14, 2012). However, North Carolina has chosen to submit this provision for inclusion into the SIP, and as inclusion of this provision is not inconsistent with federal transportation conformity requirements or the CAA, EPA is proposing to approve this provision into North Carolina's federally approved SIP.

wording, punctuation and formatting changes. EPA is proposing to approve the changes to rule .2003 because these changes do not alter transportation conformity requirements for any applicable area in North Carolina and these changes are consistent with the federal transportation conformity requirements.

Section .2005 *Memorandum of Agreement* is amended to provide a more general reference to rule .2001 instead of referencing specific subsections in rule .2001, and to make non-substantive wording, punctuation and formatting changes. EPA is proposing to approve the changes to rule .2005 because these changes do not alter transportation conformity requirements for any applicable area in North Carolina and these changes are consistent with the federal transportation conformity requirements.

In summary, EPA views the amendments described above as consistent with the federal transportation conformity requirements and the Clean Air Act, and is proposing to approve these rules, as amended, into the North Carolina SIP.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following air quality rules in 15A NCAC subchapter 2D.: Section .2001 *Purpose, Scope and Applicability,* Section .2002 *Definitions,* Section .2003 *Transportation Conformity Determination,* and Section .2005 *Memorandum of Agreement,* state-effective January 1, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

IV. Proposed Action

For the reasons explained above, EPA is proposing to approve North Carolina's March 21, 2018, SIP revision, which amends and readopts rules 15A NCAC subchapter 2D.: .2001, .2002, .2003, and .2005, for inclusion into North Carolina's SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, if they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 28, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–14143 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0326; FRL–9995–94–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on February 23, 2017. The revisions are to the Administrative Rules of Montana (ARM) open burning and permitting regulations to align the ARM with the current Montana Code Annotated (MCA) procedures for appealing a permit and requesting a hearing. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 7, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0326, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and

should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6252, *dobrahner.jaslyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 23, 2017, the State of Montana submitted a SIP revision containing amendments to open burning and permitting regulations in the ARM at 17.8.610, *Major Open Burning Source Restrictions;* 17.8.612, *Conditional Air Quality Open Burning Permits;* 17.8.613, *Christmas Tree Waste Open Burning Permits;* 17.8.614, *Commercial Film Production Open Burning Permits;* 17.8.615, *Firefighter Training;* and 17.8.749, *Conditions for Issuance or Denial of Permit.*[1] The amendments: (1) Add references to sections 75–2–211, *Permits for Construction, Installation, Alteration, or Use* and 75–2–213, *Energy Development Project—Hearing and Procedures* of the MCA pertaining to the process for appealing air quality permits, including requesting a hearing; (2) remove duplicative language in the ARM; and (3) and make minor editorial changes. The Montana Board of Environmental Review adopted the amendments on June 3, 2016 (effective July 9, 2016).

II. Analysis of State Submittal

We evaluated Montana's February 23, 2017, submittal regarding amendments to the State's ARM. The amendments to ARM 17.8.610(3), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), and 17.8.615(6) and (7) incorporate by reference section 75–2–211 of the MCA pertaining to the permit appeals process, including requesting a hearing. These statutes provide as follows:

- That a person who is directly and adversely affected by the issuance or denial of a permit may request a hearing within 15 days after the state renders a decision;
- that a request for hearing does not stay the state's decision on an application unless the board orders a stay; and
- an affidavit supporting the request for hearing must be filed within 30 days after the issuance or denial of a permit.

The revisions also remove corresponding duplicative language between the ARM and MCA and make editorial changes.

The language in the revisions to 17.8.610, 17.8.612, 17.8.613, 17.8.614, and 17.8.615 referencing 75–2–211, MCA, is equivalent to the language being removed from these sections of the ARM except for 17.8.610. According to the State,[2] 17.8.610 had not been updated during the last State revision in 2011, whereas 17.8.612, 17.8.613, 17.8.614, and 17.8.615 had been amended by the State and subsequently approved into the SIP on August 20, 2015.[3] The revisions to 17.8.610 in the February 23, 2017, submittal are identical to the revisions we approved in our August 20, 2015 rulemaking to 17.8.612, 17.8.613, 17.8.614, and 17.8.615 in that they require a hearing request affidavit to be filed within 30 days after the department renders a decision, remove an automatic stay of the department's decision to issue a permit upon a permit appeal, and add conditions and procedures for when the board may order a stay.

We are proposing to approve the revisions in ARM 17.8.610(3), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), and 17.8.615(6) and (7) because these revisions are either equivalent to the current federally-approved SIP (for 17.8.612, 17.8.613, 17.8.614, 17.8.615) or have been previously approved into the SIP in similar sections (for 17.8.610). In both instances, we previously determined that the revisions do not conflict with the CAA.[4]

The amendments to ARM 17.8.749(7) incorporate by reference section 75–2–213 of the MCA pertaining to the hearing and appeals procedures for permit applicants of energy development projects. The permit appeals procedures in 75–2–213 pertain to air quality permit decisions on energy development projects that differ from the general procedures described in 75–2–211, MCA. Specifically, the statutes proposed for approval within 75–2–213, MCA allow a permit applicant the following hearing procedures:

- The applicant may request a hearing within 30 days after the department renders a decision;
- a request for hearing must be limited to those issues presented to the state during the public comment period unless the issue is related to a material change in federal or state law made during the public comment period, to a judicial decision issued after the comment period, or to a material change to the draft permit finalized after an opportunity for comment;
- an affidavit supporting the request must be filed with the request for a hearing; and
- the applicant may, by filing a written election to the board within 15 days of receipt of request for hearing, elect a hearing before the board or have the matter submitted directly to the district court for judicial review.

The revisions also make a minor editorial change.

An important consideration before the EPA approves programs under the CAA is that the state must provide the same opportunity for judicial review of the air permitting actions in state court as would be available in federal court. The proposed revisions to 17.8.749, to incorporate the applicable statutes in 75–2–213, MCA, are in accordance with CAA sections 307(b) and 307(d)(7)(B) which provide for the judicial review of an air quality action and limits objections to an action to those that were raised with reasonable specificity during the public comment period, respectively. Additionally, if the Administrator refuses to convene a proceeding, a person may seek review in

[1] The February 23, 2017, submittal also included revisions to 17.8.1210, *General Requirements for Air Quality Operating Permit Content.* However, the state does not want us to act on 17.8.1210, because it is not part of the federal SIP. (Memorandum from State of Montana to the EPA (June 26, 2019)).

[2] Email from State of Montana to the EPA (September 30, 2016).

[3] 80 FR 50582 (August 20, 2015).

[4] 80 FR 30987 (June 1, 2015).

the United States court of appeals.[5] Similarly, 75–2–213, MCA provides permit applicants with the election to have the matter proceed to hearing before the state board or to have the matter submitted directly to the district court for judicial review. We therefore conclude that the revisions do not conflict with CAA requirements for judicial review of air permitting actions and propose to approve the revisions to 17.8.749.

III. The EPA's Proposed Action

In this action, the EPA is proposing to approve SIP amendments to Administrative Rules of Montana, shown in Table 1, submitted by the State of Montana on February 23, 2017.

TABLE 1—LIST OF MONTANA AMENDMENTS THAT THE EPA IS PROPOSING TO APPROVE

Amended Sections in the February 23, 2017 Submittal Proposed for Approval
17.8.610(3), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), 17.8.615(6) and (7), 17.8.749(7).

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in a final EPA rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in section III. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2019.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–14243 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

[5] CAA 307(d)(7)(B).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2019–0344; FRL–9995–98–Region 9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Arizona; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state plan submitted by the State of Arizona. This state plan submittal pertains to the regulation of landfill gas and its components, including methane, from existing municipal solid waste (MSW) landfills. Arizona's state plan was submitted in response to the EPA's promulgation of Emissions Guidelines and Compliance Times for MSW landfills. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 7, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–03440344 at *http://www.regulations.gov,* or via email to *buss.jeffrey@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, U.S. EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 2016, the EPA finalized Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills in 40 CFR part 60 subpart XXX and Cf, respectively. 81 FR 59332 and 81 FR 59276. These actions were taken under section 111 of the CAA.

Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA which establishes standards of performance for any air pollutant: (1) For which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112 but (2) to which a standard of performance under CAA section 111 would apply if such existing source were a new source. The EPA established the requirements for state plan submittals in 40 CFR part 60, subpart B. State submittals under CAA sections 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B.

On July 24, 2018, the Arizona Department of Environmental Quality (ADEQ) submitted to the EPA a formal section 111(d) plan for existing municipal solid waste landfills. The submitted section 111(d) plan was in response to the August 29, 2016 promulgation of federal NSPS and emission guidelines requirements for MSW landfills, 40 CFR part 60, subparts XXX and Cf, respectively (81 FR 59332 and 81 FR 59276) 76 FR 15372).

II. Summary of the Plan and EPA Analysis

The EPA has reviewed the Arizona section 111(d) plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, the EPA is proposing to determine that the submitted section 111(d) plan meets the above-cited requirements. The primary mechanism selected by ADEQ to implement the emission guidelines for MSW landfills under state jurisdiction is through incorporation by reference of 40 CFR part 60, subpart Cf and 40 CFR part 60, subpart XXX into the Arizona Administrative Code (A.A.C.), at A.A.C. R18–2–731, entitled ''Standards of Performance for Existing Municipal Solid Waste Landfills,'' and A.A.C. R18–2–901(79), entitled ''New Source Performance Standards,'' on July 6, 2018. These subparts will be applicable to MSW landfills under the plan upon the EPA's approval of the plan by final rulemaking. A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

III. Proposed Action

The EPA is proposing to approve the Arizona section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart D, to reflect this action. This approval is based on the rationale previously discussed and in further detail in the TSD associated with this action. The scope of the proposed approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state plan. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference ADEQ rules regarding MSW landfills discussed in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov,* Docket ID No. EPA–R09–OAR–2019–0344, and at the EPA Region IX Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

In reviewing state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of Arizona's state plan submittal for existing MSW landfills does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the state plan is not approved to apply in Indian country located in the state, and the

EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 20, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–14245 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2019–0345; FRL–9995–96–Region 9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Pinal County Air Quality Control District; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state plan submitted by the Pinal County Air Quality Control District (PCAQCD). For the purposes of this plan, the PCAQCD is considered a ''State'' as defined in the ''Standards of Performance for New Stationary Sources''. This state plan submittal pertains to the regulation of landfill gas and its components, including methane, from existing municipal solid waste (MSW) landfills. This state plan was submitted in response to the EPA's promulgation of Emissions Guidelines and Compliance Times for MSW landfills. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 7, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0345 at *http://www.regulations.gov,* or via email to *buss.jeffrey@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, U.S. EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 29, 2016, the EPA finalized Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills in 40 CFR part 60 subpart XXX and Cf,. 81 FR 59332 and 81 FR 59276 respectively. These actions were taken under section 111 of the CAA.

Section 111(d) of the CAA requires the EPA to establish a procedure for a state to submit a plan to the EPA which establishes standards of performance for any air pollutant: (1) For which air quality criteria have not been issued or which is not included on a list published under CAA section 108 or emitted from a source category which is regulated under CAA section 112 but (2) to which a standard of performance under CAA section 111 would apply if such existing source were a new source. The EPA established these requirements for state plan submittal in 40 CFR part 60, subpart B. State submittals under CAA sections 111(d) must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Cf, and the requirements of 40 CFR part 60, subpart B.

On March 4, 2019, the Arizona Department of Environmental Quality (ADEQ), on behalf of the PCAQCD, submitted to the EPA a formal section 111(d) plan for existing municipal solid waste landfills. The submitted section 111(d) plan was in response to the August 29, 2016 promulgation of federal NSPS and emission guidelines requirements for MSW landfills, 40 CFR part 60, subparts XXX and Cf, respectively (81 FR 59332 and 81 FR 59276).

II. Summary of the Plan and EPA Analysis

The EPA has reviewed the PCAQCD section 111(d) plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, the EPA is proposing to determine that the submitted section 111(d) plan meets the above-cited requirements. The primary mechanism selected by PCAQCD to implement the emission guidelines for MSW landfills under state jurisdiction is through incorporation by reference of 40 CFR part 60, subpart Cf and 40 CFR part 60, subpart XXX into the PCAQCD Code at Chapter 5, Article 34 (5–34–2050), entitled ''Standards of Performance for Existing Municipal Solid Waste Landfills'', and Chapter 6, Article 1 (6–1–030), entitled ''New Source Performance Standards,'', on December 19, 2018. These subparts will be applicable to MSW landfills under the plan upon the EPA's approval of the plan by final rulemaking. A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

III. Proposed Action

The EPA is proposing to approve the PCAQCD section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart D, to reflect this action. This approval is based on the rationale previously discussed and in further detail in the TSD associated with this action. The scope of the proposed approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state plan. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference PCAQCD rules regarding MSW landfills discussed in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov,* Docket ID No. EPA–R09–OAR–2019–0345, and at

the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

In reviewing state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of the PCAQCD plan submittal for existing MSW landfills does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the state plan is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 20, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–14250 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2019–0226; FRL–9996–13]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (19–3.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 3 chemical substances which are the subject of premanufacture notices (PMNs). This action would require persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these 3 chemical substances for an activity that is designated as a significant new use by this proposed rule. This action would further require that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice, and EPA has conducted a review of the notice, made an appropriate determination on the notice under TSCA 5(a)(3), and has taken any risk management actions as are required as a result of that determination.

DATES: Comments must be received on or before August 7, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0226, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical

substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these proposed SNURs would need to certify their compliance with the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after August 7, 2019 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for 3 chemical substances which were the subjects of PMNs P–16–417, P–18–239, and P–18–240. These proposed SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

The record for the proposed SNURs on these chemicals was established as docket EPA–HQ–OPPT–2019–0226. That record includes information considered by the Agency in developing these proposed SNURs.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines through rulemaking that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B)(i) (15 U.S.C. 2604(a)(1)(B)(i)) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. TSCA prohibits such manufacturing or processing from commencing until EPA has conducted a review of the SNUN, made an appropriate determination on the SNUN, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A) (15 U.S.C. 2604(a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1) (15 U.S.C. 2604(b) and 2604(d)(1)), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the conditions of use of the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is proposing to designate those reasonably foreseen and other potential conditions of use as significant new uses.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for 3 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a

significant new use designated by the SNUR.

This information may include testing not required to be conducted but which would help characterize the potential health and/or environmental effects of the PMN substance. Any recommendation for information identified by EPA was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the chemical substance. Further, any such testing identified by EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models. EPA also recognizes that whether testing/further information is needed will depend on the specific exposure and use scenario in the SNUN. EPA encourages all SNUN submitters to contact EPA to discuss any potential future testing. See Unit VII. for more information.

- CFR citation assigned in the regulatory text section of these proposed rules.

The regulatory text section of these proposed rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the proposed rules, may be claimed as CBI.

The chemical substances that are the subject of these proposed SNURs are undergoing premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other reasonably foreseen conditions of use. EPA has preliminarily determined that the chemicals under their intended conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with all of the reasonably foreseen or other potential conditions of use for these chemicals. EPA is proposing to designate these reasonably foreseen and other potential conditions of use as significant new uses. As a result, those conditions of use are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

The substances subject to these proposed rules are as follows:

PMN Number: P–16–417

Chemical name: Isocyanate terminated polyurethane resin (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an adhesive for open, non-dispersive use. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on analogous substances, EPA has identified concerns for sensitization, if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture (including import) of the PMN substance with isocyanate residuals greater than 7% and polymeric isocyanate residuals greater than 13%.
2. Consumer or commercial use (*i.e.,* industrial use only).

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the human health toxicity of the PMN substance may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption and sensitization testing would help characterize the potential health effects of the PMN substance.

CFR citation: 40 CFR 721.11295.

PMN Numbers: P–18–239 and P–18–240

Chemical names: N-alkyl propanamide (generic) (P–18–239) and N-alkyl acetamide (generic) (P–18–240)

CAS numbers: Not available

Basis for action: The PMNs state that the generic use of the substances will be as reactants in coatings. Based on the physical/chemical properties of the PMN substances, and SAR analysis of test data on analogous substances, EPA has identified concerns for developmental and systemic toxicity and skin, eye and lung irritation if the chemical substances are used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substances that EPA intends to assess before they occur include the following:

- Any use of the PMN substances other than as the confidential use described in the PMNs.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

Potentially useful information: EPA has determined that certain information about the health effects of the PMN substances may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ toxicity, reproductive toxicity, developmental toxicity and irritation testing would help characterize the potential health effects of the PMN substances.

CFR citations: 40 CFR 721.11296 (P–18–239) and 40 CFR 721.11297 (P–18–240).

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these proposed SNURs and as further discussed in Unit IV, EPA identified certain other reasonably foreseen conditions of use, in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with all of the reasonably foreseen and other potential conditions of use. EPA is proposing to designate these conditions of use as significant new uses to ensure that they do not occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is proposing SNURs for 3 specific chemical substances which are undergoing premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses that would be designated in this proposed rule:

- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA would be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3) (A) or (B) and take the required regulatory action associated

with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

- EPA would be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a proposed SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VI. Applicability of the Proposed Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule were undergoing premanufacture review at the time of signature of this proposed rule and were not on the TSCA Inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these proposed SNURs, EPA concludes that the proposed significant new uses are not ongoing.

EPA designates July 2, 2019, as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0226.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This proposed rule would establish SNURs for 6 new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA, 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574).

This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that promulgation of this proposed SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018, only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this proposed rule. As such, EPA has determined that this proposed rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1531–1538 *et seq.*).

E. Executive Order 13132: Federalism

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 30, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.11295 through 721.11298 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

Subpart E—Significant New Uses for Specific Chemical Substances

§ 721.11295 Isocyanate terminated polyurethane resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically

identified as isocyanate terminated polyurethane resin (generic) (PMN P–16–417) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, Commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (o). It is a significant new use to manufacture (including import) the substance with isocyanate residuals greater than 7% and polymeric isocyanate residuals greater than 13%.

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11296 N-alkyl propanamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as N-alkyl propanamide (PMN P–18–239) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, Commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11297 N-alkyl acetamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as N-alkyl acetamide (PMN P–18–240) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, Commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved].

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2019–14431 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

[Docket ID FEMA–2017–0025]

RIN 1660–AA90

National Flood Insurance Program (NFIP); Revisions to Methodology for Payments To Write Your Own (WYO) Companies

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: As directed by the Biggert-Waters Flood Insurance Reform Act of 2012, the Federal Emergency Management Agency (FEMA) intends to modify the way it pays private insurance companies participating in the Write Your Own (WYO) Program. FEMA seeks comment regarding possible approaches to incorporating actual flood insurance expense data into the payment methodology that FEMA uses to determine the amount of payments to WYO companies.

DATES: Comments must be submitted by September 6, 2019.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2017–0025, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Sarah Ice, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 320–5577 (phone); or *sarah.devaney-ice@fema.dhs.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.* The public may also inspect background documents and submitted comments at FEMA, Office of Chief Counsel, 500 C Street SW, Washington, DC 20472–3100.

II. Glossary of Terms, Abbreviations, and Frequently Used Acronyms

To aid the reader, the following glossary (Table 1) defines technical terms most commonly used throughout this notice.

TABLE 1—GLOSSARY OF FREQUENTLY USED TECHNICAL TERMS

Term	Definition
Allocated Loss Adjustment Expense (ALAE)	A loss adjustment expense that is assignable or allocable to a specific claim, usually adjuster fees.
Credibility	(1) An actuarial term describing the degree of accuracy in forecasting future events based on statistical reporting of past events. (2) The weight assigned or assignable to observed data in contrast to that assigned to an external or broader-based set of data. Credibility is used to provide a measure of the relative predictive value of the data being reviewed. Weights can be determined through detailed formulas or by judgment. The weight assigned should generally increase with the number of exposure bases in the observed data and should decrease with higher levels of variability in the observed data.
General Expenses	An insurer's marketing, operating, and administrative expenses. Does not include loss adjustment expenses.
Incurred Loss	Sustained losses, paid or not, during a specified time period. Incurred losses are typically found by combining losses paid during the period plus unpaid losses sustained during the time period minus outstanding losses at the beginning of the period incurred in the previous period.
Loss Adjustment Expense (LAE)	The cost of investigating and adjusting a loss.
Net Written Premium	Written premium less deductions for reinsurance premiums and any commissions resulting from the purchase of reinsurance.
Paid Losses	Losses and allocated loss adjustment expenses (ALAE) paid to policyholders during a financial reporting period.
Ratio	Percent. For example, the percentage of ratio 2:4 is 50%. (2:4 can be written as 2/4; 2 divided by 4 equals .5, or 50%).
Special Allocated Loss Adjustment Expense (SALAE)	A loss adjustment expense assignable or allocable to a specific claim that is not covered as ALAE because the expense is not applicable in a standard claim. For example, an insurance company may need to hire an engineer to determine if flooding caused a covered loss or an expert to determine the extent of damage to a large piece of machinery. SALAE also includes litigation costs associated with a specific claim.
Unallocated Loss Adjustment Expense (ULAE)	All external, internal, and administrative claims handling expenses, including determination of coverage, that are not included in allocated or special allocated loss adjustment expenses.
Written Premium	The premium registered on the books of an insurer or a reinsurer at the time a policy is issued and paid for. This also includes any changes to that premium due to cancellations or mid-term endorsements.

To further aid the reader, the following table (Table 2) provides abbreviations and acronyms frequently used in this notice.

TABLE 2—ABBREVIATIONS AND ACRONYMS

Term	Abbreviation/ Acronym
Allocated Loss Adjustment Expense.	ALAE
Biggert-Waters Flood Insurance Reform Act of 2012.	BW–12
Federal Emergency Management Agency.	FEMA
Federal Insurance and Mitigation Administration.	FIMA
Homeowner Flood Insurance Affordability Act of 2014.	HFIAA
Loss Adjustment Expense	LAE
National Association of Insurance Commissioners.	NAIC
National Flood Insurance Act of 1968.	NFIA
National Flood Insurance Program.	NFIP
Special Allocated Loss Adjustment Expense.	SALAE
Unallocated Loss Adjustment Expense.	ULAE
Write Your Own	WYO

III. Background

A. The National Flood Insurance Program (NFIP) and the Write Your Own (WYO) Program

The National Flood Insurance Act of 1968 (NFIA), as amended (42 U.S.C. 4001 *et seq.*), authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out the NFIP to enable interested persons to purchase insurance against loss resulting from physical damage to, or loss of, real or personal property arising from flood in the United States. *See* 42 U.S.C. 4011(a). Congress intended the NFIP to be ''a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry.'' *See* 42 U.S.C. 4001(b). Under the NFIA, FEMA may carry out the NFIP through the facilities of the Federal government, using, for the purposes of providing flood insurance coverage, insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States. *See* 42 U.S.C. 4071.

Pursuant to this authority, FEMA works closely with the insurance industry to facilitate the sale and servicing of flood insurance policies. A person can purchase an NFIP flood insurance policy, also known as the Standard Flood Insurance Policy (SFIP), either: (1) Directly from the Federal government through a direct servicing agent, or (2) from a private insurance company (referred to as a WYO company) through the WYO Program. The SFIP sets out the terms and conditions of insurance. FEMA establishes terms of insurance and rates, which are the same whether purchased directly from the NFIP or through the WYO Program.

FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with the WYO companies, which addresses the

terms and conditions for administering the NFIP policies, including compensation. FEMA publishes the annual Arrangement in the **Federal Register**. *See* 44 CFR 62.23(a). FEMA published the Fiscal Year 2019 Arrangement in March 2018, which became effective October 1, 2018. 83 FR 11772 (Mar. 16, 2018).

B. Legislative Mandate To Revise the WYO Compensation Methodology

Congress enacted the Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12) (Title II, Subtitle A of Public Law 112–141, 126 Stat. 405) to extend the NFIP's authorities through September 30, 2017, and to adopt significant program reform. Section 100224 of BW–12 (42 U.S.C. 4081 note) directs FEMA, the Government Accountability Office (GAO), and WYO companies to take a series of actions designed to improve the oversight of compensation provided to WYO companies under the WYO program.

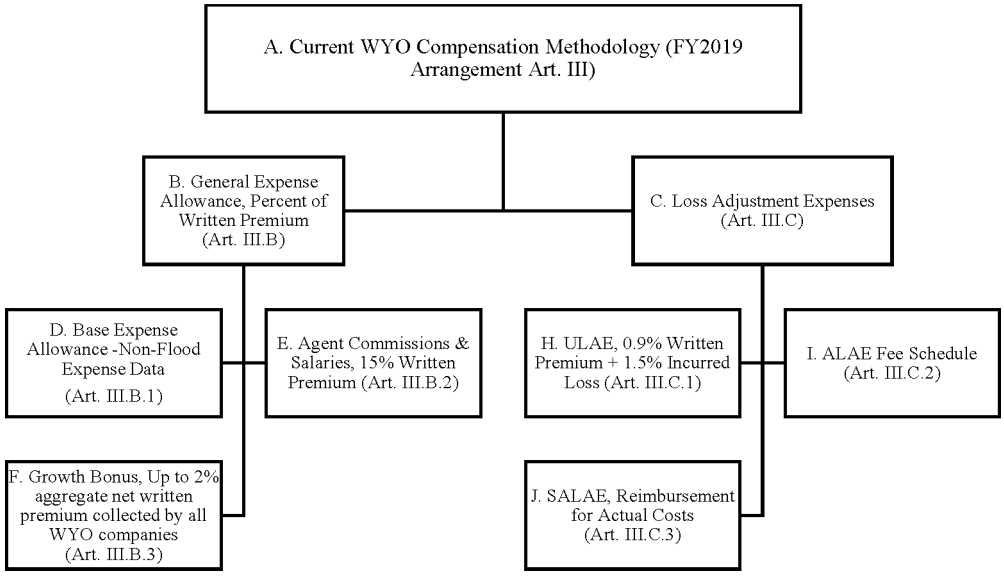
Subsection (b) directs FEMA to develop a methodology for determining the amount of reimbursements paid to WYO companies for selling, writing, and servicing NFIP policies and adjusting claims. FEMA must develop such methodology using ''actual expense data for the flood insurance line.'' FEMA can derive the methodology from either: (1) Flood insurance expense data provided by WYO companies; (2) flood insurance expense data collected by the National Association of Insurance Commissioners; or (3) a combination of previous two methods. This methodology is due 180 days following the enactment of BW–12.

Subsection (d) instructs FEMA to ''issue a rule'' adopting a revised WYO payment methodology. Such methodology must specify compensation in both catastrophic and non-catastrophic loss years and be structured to ensure reimbursements track the actual expenses of WYO companies as closely ''as practicably possible.'' Based on the structure of section 100224, FEMA believes that Congress intended that the rule also align with the methodology FEMA is required to develop pursuant to subsection (b). FEMA intends to adopt a replacement WYO payment methodology via the notice-and-comment rulemaking process in order to comply with this direction.

C. Current WYO Payment Methodology

As set forth in the FY 2019 Arrangement, FEMA currently pays WYO companies for their expenses by authorizing companies to retain a portion of the premiums they collect on behalf of the NFIP. Article III of the Arrangement describes the methodology for calculating the amount WYO companies may keep as compensation. This includes the methodology for paying WYO companies for their marketing, operating, and administrative expenses (collectively referred to as general expenses) (Article III.B of the Arrangement) and the methodology for compensating WYO companies for their loss adjustment expenses (LAE) (Article III.C of the Arrangement). *Figure 1* illustrates this payment methodology.

Figure 1. Diagram of Current WYO Compensation Methodology



1. Marketing, Operating, and Administrative Expenses (General Expenses) (B in Figure 1)

Article III.B of the Arrangement authorizes WYO companies to retain a certain percentage of the written premiums they collect for the NFIP as compensation for their general expenses, including the costs of marketing, selling, and servicing policies.

FEMA calculates the Base WYO Expense Allowance Percentage (D in Figure 1) and then adds additional amounts, as described below. To determine the Base WYO Expense Allowance Percentage, FEMA begins with data from five non-flood insurance lines, namely Homeowners Multiple Peril, Fire, Allied Lines,[1] Farmowners Multiple Peril, and Commercial Multiple Peril (non-liability portion).[2] It

[1] ''Allied Lines'' are coverages which are generally included with property insurance, such as glass, tornado, windstorm and hail; sprinkler and water damage; explosion, riot, and civil commotion; growing crops; flood; rain; and damage from aircraft and vehicle. *See http://www.naic.org/consumer_glossary.htm.*

[2] The non-liability portion is the portion that deals with property insurance; the liability portion covers non-property based risks, such as civil liability for libel, slander, negligence, and unlawful employment practices. The property side is the side

Continued

uses these five insurance lines because (1) data on flood insurance expenses has only recently become widely available; (2) current reporting of flood insurance expenses has limited reliability; and (3) these non-flood lines are the most similar to flood insurance.[3] FEMA obtains data for these five insurance lines from A.M. Best Company's *Aggregates and Averages* publication.[4] Each of these five insurance lines has various expense categories. FEMA uses three expense categories that fit most closely with flood insurance expenses. These include ''General Expenses,'' ''Other Acquisition Expenses,'' and ''Taxes, Licenses, and Fees.'' For each expense category, FEMA divides actual expenses by the written premium to come up with an expense ratio. For example, if the General Expenses are $50 and the written premiums are $5,000, FEMA divides $50 by $5,000 to come up with an expense ratio of 1%, meaning General Expenses equaled 1% of the written premium.

After FEMA calculates the expense ratio for each of the three expense categories, it adds them together to come up with the total expense ratio for each of the five insurance lines identified above. For example, if the expense ratio for General Expenses is 1%, for Other Acquisition Expenses is 5%, and for Taxes, Licenses, and Fees is 2%, FEMA then adds all three together (1 + 5 + 2) to come up with the total expense ratio for that insurance line (1 + 5 + 2=8%), which in this scenario is 8%. FEMA does this calculation for each of the five insurance lines. Once it has the total expense ratio for each of the five insurance lines, it weight averages them (using written premiums as weights) to determine the average expense ratio for all five lines of insurance combined. For example, if the expense ratios for each of the five insurance lines is: 2.6%, 9%, 11%, 13%, and 5%, and each line expressed as a portion of the total premiums of all five lines is: 25%, 25%, 25%, 15%, and 10%, respectively, FEMA multiplies each expense ratio by its portion of total premiums. FEMA then adds the products to get an annual weighted average expense ratio for the non-flood insurance lines of insurance of 8.1% ((2.6×0.25)+(9×0.25)+(11×0.25)+(13×0.15)+(5×0.1)=8.1%).

To account for variability from year to year, FEMA then takes the annual weighted average expense ratio that it calculated for each of the previous 4 years, plus the weighted average expense ratio for the current year and averages them. For example, if the current year expense ratio is 8.1%, the previous year 1 ratio is 6%, the previous year 2 ratio is 4%, the previous year 3 ratio is 8%, and the previous year 4 ratio is 3%, then FEMA would add these ratios together (8.1 + 6 + 4 + 8 +3 = 29.1%), and then divide 29.1% by 5 to get an average expense ratio of 5.82%. The Base WYO Expense Allowance Percentage would then be 5.82%.

FEMA then adds an additional 15 percentage points to pay WYO companies for commissions or salaries of insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses (E in Figure 1). *See* Arrangement III.B.2. Prior to the Fiscal Year 2019 Arrangement, FEMA also added an additional 1 percentage point to the Base WYO Expense Allowance Percentage to account for the additional complexity associated with selling and servicing NFIP policies. *See* FY 2018 Arrangement, Art. III.B.1, 82 FR 17017, 17020 (Apr. 4, 2017); Arrangement, 44 CFR 62, App. A, Art. III.B ¶ 2 (Arrangement applicable prior to FY 2018).[5]

From 2009 to 2017, the percentages of written premium for each year (which include the Base WYO Expense Allowance Percentage, the extra 1 percentage point for years prior to FY 2019, and the 15 percentage points for agent commissions), were as follows:

TABLE 3—WYO EXPENSE ALLOWANCE PERCENTAGE

Arrangement year	Percent of written premium paid to WYO for general expenses
2009	29.8
2010	30.0
2011	30.2
2012	30.4
2013	30.7
2014	30.7
2015	30.8
2016	30.9
2017	30.9
2018	30.9
2019	[6] 30

In addition to these amounts, FEMA also provides for the possibility of a growth bonus. (F in Figure 1). *See* Arrangement III.B.3. The actual bonus varies by the extent a WYO company meets certain marketing goals. The total growth bonus paid to all WYO companies may not exceed 2 percent of aggregate written premium for all companies. Prior to the 2019 Arrangement, an individual company could not receive a growth bonus of more than 2 percent of such individual company's written premium. *See, e.g.* FY 2018 Arrangement, Art. III.B.3.

2. Loss Adjustment Expenses (LAE) (C in Figure 1)

LAE are expenses incurred in the course of adjusting insurance claims.[7] There are three categories of LAE in the Arrangement: (1) unallocated loss adjustment expenses (ULAE), (2) allocated loss adjustment expenses (ALAE), and (3) special allocated loss adjustment expenses (SALAE).

ULAE (H in Figure 1) are expenses a WYO company incurs while adjusting flood insurance claims but cannot attribute to a specific claim. Examples of ULAE include general overhead, adjuster supervision expenses, and catastrophic response resources, such as mobile claim response units. FEMA reimburses ULAE based on a ''ULAE Schedule.'' Arrangement III.C.1. The Fiscal Year 2017 schedule provides for 0.9 percent of net written premium and 1.5 percent of incurred loss.[8] FEMA

most akin to flood insurance and so FEMA uses that side for its calculation.

[3] As explained later in this notice, in December 2016, the Government Accountability Office (GAO) found that insurers were not consistently reporting flood insurance expense data to the National Association of Insurance Commissioners, resulting in underreporting of certain underwriting and loss expenses for their flood insurance lines. *See* GAO, *Flood Insurance: FEMA Needs to Address Data Quality and Consider Company Characteristics When Revising Its Compensation Methodology* (Jan. 9, 2017), at *http://www.gao.gov/products/GAO-17-36.*

[4] A.M. Best is an independent rating agency that focuses on the insurance industry. *See http://www.ambest.com.* A.M. Best obtains their data from financial statements submitted to the National Association of Insurance Commissioners (NAIC) by insurers in order to comply with State insurance regulator reporting requirements.

[5] *See* 81 FR 84483 (Nov. 23, 2016) (removing the Arrangement from regulation).

[6] Percentage reflects the FY 2019 Arrangement's one percent reduction in compensation for general expenses. The rate would have been 31 percent without FY19 Arrangement's 1 percent reduction.

[7] Adjusting an insurance claim is a determination of the amount payable by the insurer to the insured on a claim under an insurance policy.

[8] Prior to Hurricane Katrina, FEMA reimbursed ULAE based on 3.3 percent of incurred losses, as that was the number FEMA determined was required to maintain sufficient WYO company participation in the NFIP program. Katrina, however, revealed that in a high-severity localized event, a payment of 3.3 percent of incurred losses resulted in significant overpayments to WYO companies. For this reason, FEMA removed the percentage from the Arrangement and instead communicated it on an annual basis. *See* 73 FR 18182, 18184–5 (April 3, 2008). Following this

calculates incurred loss based on claims that have been reported to the WYO company. FEMA excludes any estimate by the WYO company for additional dollars the WYO company will pay on claims from flooding events that have already happened but have not yet been reported to the company. Further, in calculating incurred loss for those claims already reported to the company, FEMA includes both amounts already paid on those claims and the estimate by the company of amounts remaining to be paid on those claims.

ALAE (I in Figure 1) are adjustment expenses attributable to specific claims, such as fees to adjusters. FEMA pays for ALAE for adjuster expenses according to a fee schedule, but only after the claim has been closed. Arrangement III.C.2. The NFIP published the current ALAE fee schedule in 2017. *See* NFIP Claims Manual, Appendix A.[9] The schedule provides for a range of flat rate fees varying according to the disposition of a claim and the amount of the gross paid loss.[10] The ALAE schedule is reproduced in part below:

TABLE 4—ALAE FEE SCHEDULE

Claim Range	Fee
Erroneous Assignment	$95.00.
Claim Withdrawn	$95.00.
Closed Without Payment (CWOP).	$395.00.
.01–$1,000.00	$525.00.
$1,000.01–$5,000.00	$800.00.
$5,000.01–$10,000.00	$1,035.00.
$10,000.01–$15,000.00	$1,175.00.
$15,000.01–$25,000.00	$1,275.00.
$25,000.01–$35,000.00	$1,475.00.
$35,000.01–$50,000.00	$1,750.00.
$50,000.01–$100,000.00.	3.4% but not less than $1,750.
$100,000.01–$250,000.00.	2.6% but not less than $4,250.
$250,000.01–$1,000,000.00.	2.4% but not less than $7,800.
$1,000,000.01 and up	2.2% but not less than $24,000.

The current ULAE and ALAE schedules have resulted in payments equal to 6.7 percent of the total losses paid (the amount actually paid for claims) during the last 5 years for which data is available. However, annual paid losses and the annual amount of LAE payments that are incurred to service them vary widely in that period, as seen in the Table 5:

TABLE 5—AMOUNT FEMA PAID FOR ALAE AND ULAE[11]

[$ Thousands]

Arrangement year	A. Paid Loss	B. ALAE Paid	C. ULAE Paid	D. Payment for LAE/Paid Loss Ratio (B+C)/A = D (percent)
2013	$7,463,580	$295,439	$137,529	5.80
2014	741,729	33,205	37,803	9.57
2015	687,407	28,116	36,358	9.38
2016	1,864,887	61,930	73,571	7.27
2017	3,376,735	107,296	141,216	7.36
5-Yr Total/Avg	14,134,338	525,986	426,476	6.74

SALAE include specialized claims handling expenses attributable to a specific claim, such as for legal, surveying, or engineering support. Unlike ULAE and ALAE, FEMA does not use a schedule to reimburse SALAE, but rather pays for SALAE on a dollar-for-dollar reimbursement basis.[12]

SALAE represents a very small portion of the National Flood Insurance Program's expenses and overall claims process. In 2015, FEMA's internal data indicates that 8.10 percent of claims involved SALAE payments, which cost 0.47 percent of losses incurred for that year. In 2016, 2.57 percent of claims involved SALAE payments, which cost 0.18 percent of losses incurred for that year. However, administering this small portion on a dollar-for-dollar reimbursement basis requires significant administrative oversight on the part of FEMA. FEMA program staff review each reimbursement request to ensure fair pricing and reasonable use of professional services. Specific for reimbursement of litigation of claims, FEMA employs several dedicated program and legal staff members to oversee reimbursement of WYO companies for their legal expenses.

D. Findings of Inadequacies in Current Methodology

Relevant to this discussion, the GAO has issued two reports outlining its concerns with FEMA's methodology for calculating the amount FEMA pays WYO companies. In August 2009, GAO issued a report entitled, ''Flood Insurance: Opportunities Exist to Improve Oversight of the WYO Program'' (2009 GAO Report).[13] In the report, GAO criticized the NFIP for not considering actual flood insurance expense information when it determines the amount it pays the WYO company for selling and servicing flood insurance policies and adjusting claims. 2009 GAO Report, 5–6. As part of the review, GAO examined the expense payments FEMA made to six WYO companies for their actual expenses for calendar years 2005 through 2007. *Id.* at 6. GAO found

change FEMA altered its ULAE reimbursement method to decrease variations between low and high-payout years. Accordingly, it decreased its payment of incurred losses to 1.5 percent, and began reimbursing 1 percent of net written premiums, eventually reaching today's level at .9 percent of net written premiums. (The net written premium percentage was designed to cover expenses that are more fixed; as such, it is more static and thus avoids overcompensation during disaster years.)

[9] *https://www.fema.gov/media-library-data/1535556801689-ef2b1232f884cc6e4396a8cc7e7526b3/Appendix_A_Adjuster_Fee_Schedule.pdf.*

[10] ''Gross Loss'' is the agreed cost to repair before application of depreciation or the applicable deductible(s), but subject to policy limitations (such as those dollar amounts specified in Coverage B — Personal Property Special Limits and Coverage C — Other Coverages, Loss Avoidance Measures and Property Removed to Safety) and exclusions.

[11] Data were based on annual end of year financial statements for the National Flood Insurance Program and expenses paid exclusively for the Write Your Own program. All amounts shown in this table track payments to the Arrangement Year (Oct 1 through Sep 30) in which they were made. This is in contrast to other methods of tracking payments *(see, e.g.,* Table 7) to the year the flood occurred.

[12] The basic SALAE guideline is WYO Bulletin W–10039 (April 1, 2010), available at *https://bsa.nfipstat.fema.gov/wyobull/2010/w-10039.pdf.*

[13] GAO–09–455 (Sept. 21, 2009), available at *http://www.gao.gov/products/GAO-09-455.*

that the payments exceeded the WYO companies' actual expenses by $327.1 million, or 16.5 percent of total payments made. *Id.*

However, the 2009 GAO report also found inconsistencies in the actual flood expenses data obtained by the National Association of Insurance Commissioners (NAIC). *Id.* at 5–6. GAO found that some companies reported their flood insurance expenses to NAIC after offsetting them with the payments they received from FEMA. *Id.* In other instances, it found that companies included payments made under service agreements with affiliated companies that may have included profit distributions that should not have been included. *Id.* Accordingly, GAO found that the consistency of WYO companies' reporting to NAIC needs to be improved in order for data on the companies' expenses to be fully utilized. *See id.* at 5–6.

In December 2016, GAO issued another report entitled, ''Flood Insurance: FEMA Needs to Address Data Quality and Consider Company Characteristics When Revising Its Compensation Methodology'' (2016 GAO Report).[14] In this report, GAO affirmed its 2009 recommendations and found that FEMA has yet to revise its WYO compensation methodology to reflect actual expenses, due in large part to a lack of quality data on actual expenses.

E. WYO Expenses Reported to NAIC Compared to WYO Compensation

FEMA has examined the difference between payments made under the current methodology and the actual expenses reported by WYO companies to the NAIC between 2009 and 2013, the latest year data is available for either methodology.[15] The results appear in Table 6. FEMA found that the reimbursement rate for general expenses under the current methodology exceeded the actual flood expense ratio calculated using NAIC data.

TABLE 6—GENERAL EXPENSES: REPORTED FLOOD INSURANCE EXPENSES RATIO (*i.e.*, REPORTED GENERAL EXPENSES AS PERCENTAGE OF REPORTED WRITTEN PREMIUM) VS. CURRENT METHODOLOGY [16]

Arrangement year	A. NAIC Reported General Expenses	B. NAIC Reported Written Premium	C. NAIC Reported General Expenses as Percentage of Reported Written Premium A/B = C	Table 3. Percent of Written Premium Paid to WYO for General Expenses
2013	697,027,000	2,937,809,000	23.7	30.7
2014	719,039,000	2,911,660,000	24.7	30.7
2015	684,714,000	2,756,173,000	24.8	30.8
2016	723,487,000	2,759,584,000	26.2	30.9
2017	746,587,000	2,744,213,000	27.2	30.9
5-Yr Total/Avg	3,570,854,000	14,109,439,000	25.3	30.8

FEMA also analyzed LAE and found similar results, *i.e.,* the reimbursement rate under the current methodology exceeded the actual flood expense ratio using NAIC data. Both the actual expense data from the NAIC and the amounts FEMA pays under the current methodology show variation from year to year; some years have lower LAE/loss ratios while other years have higher ratios. However, as seen in Table 7, the NAIC actual expense data indicates consistently lower ratios (*i.e.,* lower LAE relative to paid loss) (column C of Table 7) than what FEMA pays under the current LAE methodology (last column of Table 7, which lists data from Table 5).

TABLE 7—LOSS ADJUSTMENT EXPENSES (LAE) AS A PERCENT OF PAID LOSSES: REPORTED BY NAIC VS. PAID UNDER CURRENT METHODOLOGY

[In $ Thousands]

Calendar year/Arrangement year [1]	A. NAIC Reported Paid Loss	B. NAIC Reported LAE Paid [2]	C. NAIC Reported LAE as Percentage of NAIC Reported Paid Loss (B ÷ A = C)	D. From Table 5 Payment for LAE/Paid Loss Ratio [3] (percent)
2013	$6,393,676	$334,276	5.23	5.80
2014	588,622	61,435	10.44	9.57
2015	829,042	65,192	7.86	9.38
2016	3,091,250	141,377	4.57	7.27
2017	7,189,144	347,127	4.83	7.36

[14] GAO–17–36 (Dec. 8, 2016), available at *http://www.gao.gov/products/GAO-17-36.*

[15] In order to control for non-credible data in some NAIC reports, FEMA only used data from participating WYO companies reporting expense ratios of 10 percent and above.

[16] These reported figures for flood insurance expense data are the latest available as of November 2018. FEMA notes that the future differences between NAIC reported expenses and the corresponding WYO Expense Allowances will be slightly different than the historical difference shown here because of the FY19 Arrangement's 1 percent reduction in compensation for general expenses.

TABLE 7—LOSS ADJUSTMENT EXPENSES (LAE) AS A PERCENT OF PAID LOSSES: REPORTED BY NAIC VS. PAID UNDER CURRENT METHODOLOGY—Continued

[In $ Thousands]

Calendar year/Arrangement year [1]	A. NAIC Reported Paid Loss	B. NAIC Reported LAE Paid [2]	C. NAIC Reported LAE as Percentage of NAIC Reported Paid Loss (B ÷ A = C)	D. From Table 5 Payment for LAE/Paid Loss Ratio [3] (percent)
5-Yr Average	3,618,347	189,882	5.25	6.74

[1] Both ''Calendar Year'' and ''Arrangement Year'' are presented in one column for user ease. Although there is a calendar year and an arrangement year for each year of data, FEMA's definitions of the two differ. Specifically, here the calendar year represents January 1 through December 31. The arrangement year represents the time frame (generally the 365 days) covered in the standard Financial Assistance/Subsidy Arrangement with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the Standard Flood Insurance Policy (SFIP). *See* 42 U.S.C. 4081(a).

[2] In column B, the LAE values listed are the sum of both ULAE and ALAE for each year. SALAE is not included in the values.

[3] In column D, the values include only payments made for ULAE and ALAE for each arrangement year. SALAE is not included in the values, as reported in Table 5.

IV. Possible Methodologies

FEMA is considering three possible methodologies for calculating payments to WYO companies. The three methodologies only address payments for general and loss adjustment expenses incurred by WYO companies. FEMA is considering additional regulatory actions to address the possibility of additional non-expense related payments, such as for profit or performance-based incentives.

FEMA presents these possible methodologies in order to solicit comments from the public. FEMA intends to use these comments to inform the publication of a notice of proposed rulemaking that will propose a new WYO payment methodology in the future.

A. Credibility Weighting Methodology: Incorporating Actual Expense Data Into Current Methodology

FEMA is considering a payment approach that uses credibility weighting procedures [17] to incorporate actual flood expense data into FEMA's current methodology (described in section III.C of this ANPRM). Credibility weighting combines two or more values. In this case, the values would be the expense compensation ratios under the current methodology and those yielded by flood insurance expense data. However, a weight is applied to each value to introduce a greater influence of one over the other in the final result. The weights are based on actuarial opinion of the quality, robustness, and representative nature of the available data, and can differ from year to year. How these factors are considered will vary based on the specific procedure or procedures used to incorporate credibility. Such procedures include Bayesian credibility procedures, empirical credibility procedures, and classical credibility procedures.[18]

Credibility weighting procedures allow FEMA to incorporate flood expense data in WYO compensation, while adjusting the impact of such data to account for its shortcomings. As data from the NAIC becomes a more credible indicator of actual flood expenses, this methodology will allow FEMA to give it greater weight. Under this approach, FEMA would steadily increase usage of actual flood expense data over time, as that data increases in credibility, while continuing to draw from the non-flood insurance expense data currently in use in the near term.

1. General Expenses

For general expenses, FEMA would credibility weight two sources of expense data: The actual flood insurance expense ratio and the non-flood insurance expense ratio. FEMA would obtain this data from A.M. Best Company's *Aggregates and Averages* publication, as FEMA does under its current methodology. The actual flood insurance expense ratio would cover the ''General Expenses,'' ''Other Acquisition Expenses,'' ''Taxes, Licenses, and Fees,'' and ''Agent Commission'' expense categories incurred by insurance companies, averaged over the previous five years for which reliable and complete data are available. FEMA projects that, based on data reported by WYO companies to the NAIC for FY 2013 through FY 2017, this would yield an expense ratio of 25.3 percent of written premium (*i.e.,* actual expenses are 25.3 percent of the written premiums) before credibility weighting.[19]

The non-flood insurance industry expense ratio would be the expense ratios for the five non-flood property/casualty insurance lines used in the current methodology. The ratios would cover the ''General Expenses,'' ''Other Acquisition Expenses,'' and ''Taxes, Licenses, and Fees'' expense categories, averaged over the previous five years, then adding the static 15 percent agent commission percentage of the current general expense scheme (discussed in section III.C.1. of this ANPRM). FEMA expects this would yield an expense ratio of 30 percent of written premium before credibility weighting.[20]

[17] The Actuarial Standard Board defines ''credibility procedure'' as: ''A process that involves the following: (a) The evaluation of subject experience for potential use in setting assumptions without reference to other data; or (b) the identification of relevant experience and the selection and implementation of a method for blending the relevant experience with the subject experience.'' Actuarial Standards Board, Actuarial Standard of Practice No. 25: Credibility Procedures, 2 (Dec. 2013), available at *http://www.actuarialstandardsboard.org/wp-content/uploads/2014/02/asop025_174.pdf.* ''Subject experience'' means ''[a] specific set of data drawn from the experience under consideration for the purpose of predicting the parameter under study.'' *Id.* ''Relevant experience'' means ''[s]ets of data, that include data other than the subject experience, that, in the actuary's judgment, are predictive of the parameter under study (including but not limited to loss ratios, claims, mortality, payment patterns, persistency, or expenses). Relevant experience may include subject experience as a subset.'' *Id.*

[18] *See* Actuarial Standards Board, Actuarial Standard of Practice No. 25: Credibility Procedures, 5–6 (Dec. 2013), available at *http://www.actuarialstandardsboard.org/wp-content/uploads/2014/02/asop025_174.pdf.*

[19] 25.3 percent is estimated based on a 5-year average of NAIC-reported data of WYO companies who reported expenses within the 10 percent and above range. FEMA limited analysis of NAIC data to this specific range because it deemed WYO-reported expenses below 10 percent to be less than credible, based on number of firms reporting and general experience with the WYO program and the NFIP.

[20] 30 percent is based on data from FY 2014 through FY 2016 (which were factored into the

Continued

Based on the current NAIC actual flood expense data, FEMA estimates that the credibility-weighted general expense ratio for FY 2019 would be approximately 28.8 percent of written premium (based on preliminary estimates that assume an initial credibility weighting of only 25 percent for the self-reported NAIC data). This would represent approximately a $36.63 million decrease in general expense payments to WYO companies in FY 2019, as compared to the current compensation baseline in 2019. As the flood expense data collected by the NAIC becomes more credible, this approach would assign greater weight to the flood insurance expense ratio.

2. LAE

As noted above, FEMA currently reimburses ULAE and ALAE using different methods. It reimburses ULAE based on 0.9 percent of written premium and 1.5 percent of incurred loss, and ALAE according to a schedule based on a range of flat-rate fees. Under the credibility weighting approach, FEMA would no longer reimburse ULAE and ALAE separately using these different methods. Instead, FEMA would use one new fee schedule (modeled after the current ALAE schedule) to determine reimbursements for both. Because FEMA would use the same reimbursement schedule for both, it would no longer need to differentiate between ULAE and ALAE; as such, this new fee schedule would depict the overall LAE payment rate. FEMA's reimbursement for SALAE would remain unchanged because FEMA currently pays for SALAE on a dollar-for-dollar reimbursement basis, and would continue to do so.

FEMA would revise this LAE fee schedule annually to minimize the difference from year to year between actual LAE that WYO companies incur as reported by NAIC and what FEMA pays to cover those incurred expenses. FEMA would minimize this difference by adjusting the previous annual LAE fee schedule by applying a certain calculated percentage. FEMA would calculate this percentage by credibility weighting (1) the payment amounts that FEMA would have made if the most recent LAE fee schedule had been in place during recent years and (2) the payment amounts that FEMA would have paid under the current LAE fee schedule, revised to yield the actual reported LAE expenses for the same period. In essence, FEMA would incorporate actual reported expenses incurred by WYO companies by regularly examining the validity of the current LAE fee schedule and revising that LAE fee schedule using historical LAE payment experience.

Using this approach, FEMA's preliminary calculations indicate that LAE under the unified fee schedule in FY 2019 would result in a payment rate of 7.63 percent of paid losses (the dollar amount of claims paid by the NFIP), which is a reduction of 0.66 percentage points from the FY 2019 compensation rate of 8.29 percent under the current LAE compensation methodology.[21] This would represent an approximately $20.28 million decrease in LAE payments to WYO companies in the first year. Over time, the LAE payment rate would better align with the year-to-year LAE expenses because FEMA would likely assign an increasing credibility to the NAIC flood expense data and each year's experience would inform and improve the next year's rates. FEMA expects an increase in credibility because of FEMA's ongoing collaboration with the NAIC to improve data quality and the NAIC's issuance of guidance on the proper accounting of reimbursements to Write Your Own companies. FEMA has also improved its monitoring of WYO expenses related to litigation, *see* WYO Bulletin W–16045 (July 19, 2016), engineering inspections, *see* WYO Bulletins W–15010 (Mar. 9, 2015), and overall expense reporting, *see* WYO Bulletin W–16048 (Aug. 4, 2016). *See, e.g.,* N.C. Gen. Stat. § 58–2–180 (willful misstatement of information in certain financial or other statements); Va. Code Ann. § 38.2–2027 (withholding of certain information and giving false or misleading information to the Commissioner of Insurance, statistical rating agencies, or any other insurer).

B. Methodology Based Completely on Flood Expense Data

FEMA is also considering a methodology that uses solely actual flood insurance expense data, meaning it would no longer use industry expense ratios as part of the calculation. Under this approach, FEMA would use reported flood expense data to determine reasonable flood expense payment ratios by dividing previous years' general expenses by the associated written premium. Setting payment rates entirely on publicly available expense data collected from the NAIC would likely be the simplest approach for FEMA to administer, but would depend entirely on the credibility of flood expense data obtained from the NAIC. While the credibility of this data continues to improve, it is not likely fully credible at this time. *See* GAO–17–36 (Dec. 8, 2016). Any approach that depends entirely on the use of flood expense data would, at least in the short term, suffer from the same deficiencies as the current methodology, in that it would not be an accurate representation of the actual expenses incurred by WYO companies in carrying out their obligations under the WYO Program.

Over the long term, this approach could result in payments that closely align with the actual reported flood expenses. However, relying solely on flood expense data would very likely result in wide gaps in what FEMA would pay year-to-year. This is because unlike expenses for non-flood lines, which tend to be evenly distributed and thus relatively stable, flooding tends to occur all at one time. Because flooding is not an evenly distributed hazard, it is difficult to insure. FEMA could continue its practice of averaging expense data over 5 years in order to smooth sudden changes in expenses. Tailoring payments to WYO companies to their actual expenses in the long term, therefore, would place the methodology solely on a self-reported basis, which is not immune from manipulation and other potential irregularities. FEMA would be required to rely entirely on data provided by the NAIC, regardless of its credibility, which, as noted above, GAO identified as a source of concern.

Based on the current NAIC actual flood expense data, FEMA projects that the general expense ratio for FY 2019 would be approximately 25.3 percent of written premium (based on preliminary estimates that average the most recent three years of expense ratios based on self-reported NAIC data). This would represent approximately a $146.51 million decrease in general expense payments to WYO companies in FY 2019.

In addition, using this approach, FEMA's preliminary calculations indicate that LAE under the unified fee schedule in FY 2019 would result in a payment rate of 5.67 percent of paid losses (the dollar amount of claims paid by the NFIP), which is a reduction of 2.62 percentage points from the FY 2019 compensation rate of 8.29 percent under the current LAE compensation methodology in FY 2019.[22] This would have represented an approximately

WYO compensation rates between FY 2017 and FY 2019).

[21] As a reference point, the average historical compensation rate for ALAE and ULAE from 2013–2017 was 6.74 percent of total paid losses.

[22] As a reference point, the average historical compensation rate for ALAE and ULAE from 2013–2017 was 6.74 percent of total paid losses.

$81.11 million decrease in LAE payments to WYO companies in FY 2018.

C. Methodology Based on Invoices

In a third possible methodology, FEMA would pay WYO companies on a direct, invoice-supported, dollar-for-dollar reimbursement basis, similar to how FEMA currently pays for SALAE. This approach would be based on the actual expenditures of WYO companies and would allow FEMA to collect detailed expenditure data. This would give FEMA more monitoring and control over WYO expenditures while ensuring that payments directly reflect an individual WYO company's incurred expenses. It would also avoid the consequences associated with the year-to-year variability of expenses discussed above. However, this approach would likely create significant administrative burdens for the NFIP and WYO companies. FEMA employs several legal and program staff members in order to oversee current SALAE reimbursements, and an expansion of direct reimbursements to cover all loss adjustment expenses would entail expanded cost burdens, given the volume of losses and the number of claims against which compensation would be tied. The timely processing of each claim's related expenses from each WYO company would not be possible given current staff and administrative capacity of FEMA and as a result, expansion of the reimbursement concept would likely require hiring numerous new staff members. Without such an increase in FEMA processing staff, a direct reimbursement methodology for all LAE expenses would result in reimbursement delays and disruption to both the policyholders and WYO companies. WYO companies would likely incur significant additional administrative expenses.

V. Public Comment

FEMA seeks public comment on all aspects of a revised WYO payment methodology, with particular interest in better understanding the implication of the three methodologies described above. FEMA will use the received comments to inform future rulemaking on the subject. Comments accompanied by supporting data and analysis of the issues addressed in those comments would provide the greatest assistance to FEMA. Additionally, FEMA would derive particular benefit from commenters addressing one or more of the following questions:

1. What are the limitations with the current WYO expense compensation methodology that you believe FEMA needs to address in the revised methodology?

2. What recommendations do you have for improving the current WYO expense compensation methodology?

3. What credibility weighting procedures should FEMA consider using, if any?

4. Do the five non-flood property/casualty lines of insurance act as a good approximation of flood insurance general expenses in the credibility weighting-based approach? If FEMA continues to use non-flood property/casualty lines of insurance, what lines should FEMA consider adding or subtracting from this list?

5. Should FEMA merge payments for ULAE into the existing ALAE fee schedule so that ULAE payments are better tailored to the severity of a flood event?

6. Does NAIC flood expense data accurately reflect the actual expenses incurred by WYO companies? What are the challenges of ensuring accurate data are provided to the NAIC and how can they best be overcome?

7. What, if any, alternative data sources can provide WYO company expense data that are more accurate than what the NAIC captures?

8. What, if any, additional costs would WYO companies incur if required to submit all NFIP-related expenses for reimbursement as they are incurred (*i.e.,* the third alternative referenced above)?

9. Does the structure of the current ALAE fee schedule adequately take into account the differences in incurred expenses between catastrophic and non-catastrophic loss years?

10. What changes to the current methodology would allow FEMA to better distinguish between catastrophic and non-catastrophic years in paying out LAE?

11. What individual characteristics of WYO companies could be used to better tailor a payment methodology to the actual expenses of individual companies?

12. What additional data may help FEMA better understand actual expenses of WYO companies?

Authority: 42 U.S.C. 4081 note.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–14343 Filed 7–5–19; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2019–0081]

RIN 2126–AA64

Certification for Conducting Driver or Vehicle Inspections, Safety Audits, or Investigations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to incorporate by reference the current policy and practices for FMCSA employees, State or local government employees, and contractors to obtain and maintain certifications for conducting driver or vehicle inspections, safety audits, or investigations. The Fixing America's Surface Transportation Act (FAST Act) requires FMCSA to incorporate by reference in its regulations the Commercial Vehicle Safety Alliance's (CVSA) ''Operational Policy 4: Inspector Training and Certification.'' The CVSA policy is currently Attachment A to FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits.'' This proposed rule, if adopted, also would replace an interim final rule (IFR) in place since 2002 that referenced the certification procedures published on the FMCSA website. FMCSA proposes to replace selected provisions of the IFR by incorporating by reference the FMCSA policy. No changes would be made to the certification policy or procedures currently followed by individuals to obtain and maintain certification to conduct driver or vehicle inspections, safety audits, or investigations. Other provisions of the IFR would be republished without change.

DATES: Comments on this document must be received on or before September 6, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMSCA–2019–0081 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

Viewing incorporation by reference material: You may view the material proposed for incorporation by reference in the docket, online at *https://www.fmcsa.dot.gov/certification,* or at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590–0001 between 8:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 385–2400.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Bomgardner, Chief, Hazardous Materials Division, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by telephone at (202) 493–0027 or by email, *paul.bomgardner@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice of proposed rulemaking (NPRM) (Docket No. FMSCA–2019–0081), indicate the specific section of this document to which the comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMSCA–2019–0081, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMSCA–2019–0081, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—FDMS), which can be reviewed at *www.transportation.gov/privacy.*

D. Waiver of Advance Notice of Proposed Rulemaking

If a regulatory proposal is likely to lead to the promulgation of a major rule, FMCSA is required to either publish an advance notice of proposed rulemaking (ANPRM), unless the Agency finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest, or conduct a negotiated rulemaking (49 U.S.C. 31136(g)). However, this rulemaking would not result in the promulgation of a major rule under the statute.

II. Executive Summary

A. Summary of the Proposed Regulatory Action

FMCSA proposes to incorporate by reference the current policy and practices for FMCSA employees, State or local government employees, and contractors to obtain and maintain certifications for conducting driver or vehicle inspections,[1] safety audits, or investigations. Under section 5205 of the FAST Act (note following 49 U.S.C. 31148), the FMCSA Administrator is required to incorporate by reference the certification standards for conducting driver or vehicle inspections issued by CVSA. Currently, CVSA's ''Operational Policy 4: Inspector Training and Certification'' (rev. Sept. 21, 2017) is Attachment A to FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits.''

FMCSA also proposes to replace an IFR titled ''Certification of Safety Auditors, Safety Investigators, and Safety Inspectors,'' published March 19, 2002 (67 FR 12776). That IFR provided the certification requirements by referencing FMCSA's website, which contains FMCSA's policy on certification and training requirements. Rather than simply referencing the policy on the FMCSA website, this NPRM proposes to replace selected provisions of the IFR by formally incorporating by reference the FMCSA policy. No changes would be made to the certification policy or procedures currently followed by individuals to obtain and maintain certification to conduct driver or vehicle inspections, safety audits, or investigations. Other provisions of the IFR would be republished without change.

The certification policy only applies to FMCSA employees and contractors and State or local government employees and contractors funded through FMCSA's Motor Carrier Safety Assistance Program (MCSAP) who wish to obtain or maintain certification to conduct driver or vehicle inspections, safety audits, or investigations. This rulemaking would not change any regulatory requirements applicable to motor carriers, drivers, or commercial motor vehicles. As such, there would be no impact on motor carriers or drivers.

B. Costs and Benefits

Because no changes are proposed to the current FMCSA certification policy,

[1] Throughout this NPRM, FMCSA uses the term ''driver or vehicle inspection'' in lieu of the term ''roadside inspection,'' recognizing that these inspections are not necessarily conducted at ''roadside.''

there are neither costs nor benefits associated with this rulemaking.

III. Legal Basis for the Rulemaking

FMCSA's authority for this rulemaking is from two statutes, section 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Public Law 106–159, 113 Stat. 1748, 1765–1766, 49 U.S.C. 31148 (Dec. 9, 1999), and section 5205 of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1537, note following 49 U.S.C. 31148 (Dec. 4, 2015).

Section 211 of the MCSIA requires the Secretary of Transportation to issue regulations ''to improve training and provide for the certification of motor carrier safety auditors . . . to conduct safety inspection audits and reviews'' under specified statutory provisions (49 U.S.C. 31148(a)). Subject to a grandfathering provision applicable to Federal and State employees who were qualified to conduct a safety inspection audit or review on December 9, 1999, the statute requires that covered safety inspection audits or reviews be conducted by individuals certified under the regulations (49 U.S.C. 31148(b)). While private contractors are authorized to obtain certification, the Secretary is not permitted to delegate authority to private contractors to issue ratings or operating authority (49 U.S.C. 31148(a) and (d)). Finally, the statute grants the Secretary authority over certified safety auditors, including the authority to withdraw their certification (49 U.S.C. 31148(e)). As further explained below in the background section, on March 19, 2002, FMCSA issued an IFR implementing this statutory provision (67 FR 12776).

Section 5205 of the FAST Act requires FMCSA's Administrator to revise 49 CFR part 385 ''to incorporate by reference the certification standards for roadside inspectors issued by the Commercial Vehicle Safety Alliance'' (note following 49 U.S.C. 31148).

This NPRM proposes to replace the 2002 IFR issued under section 211 of the MCSIA and to carry out section 5205 of the FAST Act.

IV. Background

Prior to the MCSIA, certification of Federal safety investigators and State or local government employees participating in MCSAP who performed compliance reviews or driver or vehicle inspections meant that those officials had successfully completed certain training programs. The training requirements had been in effect for a number of years.

FMCSA relied on the compliance review, an in-depth investigation, to assess a motor carrier's safety performance and compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). Compliance reviews were traditionally performed only of motor carriers with poor performance, high crash rates, high vehicle or driver out-of-service rates, or past poor compliance, or of motor carriers against which a non-frivolous complaint was made.

As noted above, section 211 of the MCSIA required the Secretary to issue regulations to conduct ''safety inspection audits and reviews.'' The Agency determined that phrase was equivalent to the ''safety review'' of new entrants into the motor carrier industry that was mandated by section 210 of the MCSIA. Section 210 also required the Secretary to ''establish the elements of the safety review,'' and the Agency inferred that a ''safety review'' may be something less than a full compliance review (67 FR 12776, Mar. 19, 2002). FMCSA selected the term ''safety audit'' for the new type of safety review to avoid confusion with safety reviews that were previously conducted by the Agency (67 FR 12777, Mar. 19, 2002).

In response to the requirement in section 211 of the MCSIA that the Agency improve training and provide for the certification of motor carrier safety auditors, FMCSA issued an IFR on March 19, 2002, titled ''Certification of Safety Auditors, Safety Investigators, and Safety Inspectors'' (67 FR 12776). This IFR modified 49 CFR 350.211 and 385.3, and added a new subpart C to part 385 consisting of §§ 385.201, 385.203, and 385.205 pertaining to certification requirements.

New subpart C referenced FMCSA's website for the specific certification requirements. The IFR stated in the preamble that all individuals who conduct safety audits, compliance reviews, or driver or vehicle inspections would be required to perform a specific number of safety audits, compliance reviews, or inspections annually with acceptable quality; to successfully complete any required training to obtain and maintain certification; and, when necessary, to obtain recertification to perform reviews of motor carriers (67 FR 12777, Mar. 19, 2002). The IFR, however, did not include specific training or certification requirements in the regulatory text. Instead, the Agency noted that it needed ''flexibility to modify course content quickly to match changes in the FMCSRs and HMRs, or to adapt other elements of the training process to changed circumstances'' (67 FR 12777, Mar. 19, 2002).

The IFR added a ''safety audit'' in § 385.3 as a new type of safety review with the purpose of assessing safety performance in new entrant motor carriers. Finally, the IFR added § 350.211(17) [2] to require State and local MCSAP partners to follow the certification requirements, a requirement that is not affected by this proposed rule.

On December 29, 2015, FMCSA issued its current ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits.'' FMCSA's policy includes four attachments. In October 2017, FMCSA amended Attachment A of its policy to incorporate the most recent version of CVSA's ''Operational Policy 4: Inspector Training and Certification,'' which was revised on September 21, 2017. In March 2019, FMCSA amended Attachment B, ''Certification of Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists[,] Safety Investigators Who Perform Cargo Tank Facility Reviews, and Other Employees Who Maintain Certification.''

V. Incorporations by Reference

A. CVSA's ''Operational Policy 4: Inspector Training and Certification''

In accordance with section 5205 of the FAST Act (note following 49 U.S.C. 31148), FMCSA proposes to incorporate by reference in its regulations CVSA's ''Operational Policy 4: Inspector Training and Certification,'' revised September 21, 2017. This rulemaking would amend an incorporation by reference found at 49 CFR 385.4 to include CVSA's policy. The policy would be referenced in proposed § 385.209.

The CVSA policy ensures that commercial motor vehicle inspectors uploading driver or vehicle inspection reports and data into FMCSA information systems are certified under a training program that is approved by CVSA. The policy provides the standards for initial inspector certification and maintenance of inspector certification. It also provides the decertification process and paths to regain certification.

The CVSA policy provides the minimum training and testing requirements and number of inspections an individual must complete to be certified to conduct the following types of driver or vehicle inspections:

- North American Standard Level I, II, III, and V Inspections;

[2] This provision, as amended, is found currently at 49 CFR 350.211(p).

- Hazardous Materials/Dangerous Goods Inspection;
- Cargo Tank Inspection;
- Other Bulk Packaging Inspection;
- Passenger Carrier Vehicle Inspection;
- North American Standard Level VI Inspection for Transuranic Waste and Highway Route Controlled Quantities (HRCQ) of Radioactive Material; and
- Performance-Based Brake Testing.

CVSA's ''Operational Policy 4: Inspector Training and Certification'' that FMCSA is proposing to incorporate by reference is Attachment A of FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits,'' and is available in the docket for this rulemaking. Additionally, the CVSA policy is available, and will continue to be available, for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 385–2400, and online at *https://www.fmcsa.dot.gov/certification.*

B. FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits''

FMCSA also proposes to incorporate by reference in its regulations FMCSA's December 29, 2015, ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits,'' as amended, without change. This rulemaking would incorporate by reference FMCSA's policy in 49 CFR 385.4 and reference it in proposed § 385.211.

FMCSA's policy applies to FMCSA employees and contractors. It also applies to State or local government employees and contractors who are funded through MCSAP, who enforce applicable Federal statutes and regulations, or who upload data into FMCSA information systems. The policy includes the following attachments:

Attachment A: CVSA's ''Operational Policy 4: Inspector Training and Certification,'' revised September 21, 2017;

Attachment B: Certification of Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists[,] Safety Investigators Who Perform Cargo Tank Facility Reviews, and Other Employees Who Maintain Certification, amended March 2019;

Attachment C: Acknowledgement of Initial Certification Completion and Maintenance Requirement; and

Attachment D: Employee Certification Status.

FMCSA's policy establishes certification requirements for individuals performing inspections, safety audits, and investigations. Attachment A of the policy provides CVSA's ''Operational Policy 4: Inspector Training and Certification,'' as discussed above. Attachment B to the FMCSA policy includes provisions addressing certification requirements to conduct safety audits, investigations, commercial enforcement investigations, as well as additional certification requirements for Commercial Enforcement Specialists, and cargo tank facility reviews. Attachment B also outlines the circumstances when individuals conducting audits or investigations will be decertified and the process for decertification. It describes a temporary waiver process that may be available when an individual becomes decertified due to reasons beyond his or her control and the recertification process. Finally, Attachment B supplements the provisions of CVSA's ''Operational Policy 4: Inspector Training and Certification'' (Attachment A), particularly as applicable to FMCSA employees.

Attachments C and D provide templates addressing the documentation of individuals' certification for FMCSA employees. Other entities have the option of using these templates or their own documentation.

FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits'' is available in the docket for this rulemaking. Additionally, FMCSA's policy is available, and will continue to be available, for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 385–2400, and online at *https://www.fmcsa.dot.gov/certification.*

VI. Other Proposed Changes

This NPRM proposes to replace the 2002 IFR. That IFR amended § 385.3 by adding the term ''safety audit'' in paragraph (2) of the definition of ''reviews.'' If the IFR is replaced, it is necessary procedurally to adopt the safety audit definition provided in the IFR, given that it has not been amended since adoption of the IFR. Therefore, FMCSA proposes to republish the definition of a safety audit without change to allow comment on the definition.

VII. Section-by-Section Analysis

This section-by-section analysis describes the proposed changes in numerical order.

A. Section 385.3 Definitions and Acronyms

FMCSA proposes to republish the definition of ''safety audit'' in paragraph (2) of the definition of ''reviews'' without change. As noted above, this action is necessary procedurally because the Agency proposes to replace the 2002 IFR.

B. Section 385.4 Matter Incorporated by Reference

FMCSA would make technical changes to § 385.4(a) to update the locations where the materials proposed to be incorporated by reference are available for inspection. Paragraph (b) would be revised to provide information about how CVSA's ''Operational Policy 4: Inspector Training and Certification'' (rev. Sept. 21, 2017) can be accessed and to incorporate it by reference. FMCSA also would add a new § 385.4(c) that would incorporate by reference FMCSA's December 29, 2015, ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits,'' as amended, and provide information about how to access the policy.

C. Subpart C—Certification To Conduct Driver or Vehicle Inspections, Safety Audits, and Safety Investigations

Sections 385.201, 385.203, and 385.205

FMCSA would remove and reserve the provisions of existing subpart C of part 385, which consist of §§ 385.201, 385.203, and 385.205, added by the IFR on March 19, 2002 (67 FR 12779). FMCSA would add new provisions consisting of §§ 385.207, 385.209, and 385.211, under the revised subpart heading, ''Subpart C—Certification to Conduct Driver or Vehicle Inspections, Safety Audits, and Safety Investigations.''

Section 385.207 Qualifications To Perform a Driver or Vehicle Inspection, Safety Audit, or Investigation of a Motor Carrier.

The heading of this new section reflects the current language for describing driver or vehicle inspections. New § 385.207(a) would identify FMCSA employees, State or local government employees, and contractors as those who may qualify to perform a driver or vehicle inspection, safety audit, or investigation. It would update the terminology ''driver or vehicle inspection, safety audit, or

investigation.'' Paragraph (b) would provide that personnel who were certified before any final rule is effective are grandfathered as long as they maintain their certification.

Section 385.209 Requirements To Obtain and Maintain Certification To Conduct Driver or Vehicle Inspections.

New § 385.209(a) would provide the certification requirements to conduct driver or vehicle inspections and specifically reference the requirements in CVSA's ''Operational Policy 4: Inspector Training and Certification,'' proposed to be incorporated by reference in § 385.4. Paragraph (b) would provide that an individual who qualifies to conduct inspections would be required to maintain certification or obtain recertification in accordance with CVSA's policy.

Section 385.211 Requirements To Obtain and Maintain Certification To Conduct Safety Audits or Investigations.

New § 385.211(a) would contain the requirements for certification to conduct safety audits or investigations and specifically reference the requirements in FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits,'' proposed to be incorporated by reference in § 385.4. Paragraph (b) would address the requirements to maintain certification and how an individual who has lost certification would be recertified.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

Under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, this proposed rule does not require an assessment of potential costs and benefits under section 6(a)(4) of that Order. This proposed rule is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6, dated Dec. 20, 2018)). Accordingly, the Office of Management and Budget has not reviewed it under these Orders. Because no changes are proposed to the current FMCSA certification policy, there are neither costs nor benefits associated with this rulemaking.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, does not apply to this action because it is not a significant regulatory action, as defined in section 3(f) of E.O. 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

This proposed rule would directly affect States and a limited number of contractors requiring certification. States do not meet the definition of a ''small entity'' in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5), both because State government is not included among the various levels of government listed in section 601(5), and because no State, including the District of Columbia, has a population of less than 50,000, which is the criterion for a governmental jurisdiction to be considered small under section 601(5). As the proposed rule would not result in costs or benefits, it would not impose impacts on the limited number of contractors that would be regulated under this rulemaking. Therefore, this proposed rule would not have an impact on a substantial number of small entities. Because no changes are proposed to the current FMCSA certification policy, this rule would not result in changes for those affected. Thus, this rulemaking would not have a significant economic impact on the regulated entities.

Consequently, I certify that the action would not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Paul Bomgardner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $161 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any 1 year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Nothing in this document preempts any State law or regulation. Therefore, this proposed rule

would not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this proposed regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it would not effect a taking of private property or otherwise have taking implications.

K. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This proposed rule would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (note following 15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. National Environmental Policy Act of 1969 (NEPA)

FMCSA analyzed this NPRM for the purpose of NEPA (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6.d. The Categorical Exclusion (CE) in paragraph 6.d. covers regulations concerning the training, qualifying, licensing, certifying, and managing of personnel. The proposed requirements in this rule would be covered by this CE and the NPRM would not have any effect on the quality of the environment. The CE determination is available for review in the docket.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385 to read as follows:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 13908, 31136, 31144, 31148, 31151, 31502; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864–868; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 2. In § 385.3, republish paragraph (2) of the definition of ''Reviews'' to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Reviews. * * *

(2) *Safety audit* means an examination of a motor carrier's operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings.

* * * * *

■ 3. Revise § 385.4 to read as follows:

§ 385.4 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal

Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FMCSA must publish notification of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590, telephone (202) 385–2400, and is available from the sources listed in paragraphs (b) and (c) of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, telephone (301) 830–6143, *www.cvsa.org.*

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' April 1, 2016, incorporation by reference approved for § 385.415(b).

(2) ''Operational Policy 4: Inspector Training and Certification,'' as revised September 21, 2017, incorporation by reference approved for § 385.209. The policy is available to the public online as Attachment A of FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits'' available at *https://www.fmcsa.dot.gov/certification.*

(c) Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590, telephone (202) 385–2400.

(1) ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits,'' December 29, 2015, as amended October 2017 with respect to Attachment A (Commercial Vehicle Safety Alliance's ''Operational Policy 4: Inspector Training and Certification'' (revised September 21, 2017)), and as amended March 2019 with respect to Attachment B (''Certification of Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists[,] Safety Investigators Who Perform Cargo Tank Facility Reviews, and Other Employees Who Maintain Certification''), incorporation by reference approved for § 385.211. The policy is available to the public online at *https://www.fmcsa.dot.gov/certification.*

(2) [Reserved]

■ 5. Revise the subpart C to read as follows:

Subpart C—Certification to Conduct Driver or Vehicle Inspections, Safety Audits, and Investigations

Sec.

Subpart C—Certification to Conduct Driver or Vehicle Inspections, Safety Audits, and Investigations

§ 385.201–385.205 [Reserved]

§ 385.207 Qualifications to perform a driver or vehicle inspection, safety audit, or investigation of a motor carrier.

(a) *General.* Subject to paragraph (b) of this section, an FMCSA employee or contractor, or a State or local government employee or contractor funded through the Motor Carrier Safety Assistance Program or authorized to upload data to FMCSA, may qualify to perform a driver or vehicle inspection, safety audit, or investigation by complying with the requirements of this subpart.

(b) *Previously qualified personnel.* An FMCSA employee or contractor, or a State or local government employee or contractor funded through the Motor Carrier Safety Assistance Program or authorized to upload data to FMCSA, who was qualified to perform a driver or vehicle inspection, safety audit, or investigation before [DATE 60 DAYS AFTER PUBLICATION OF FINAL RULE IN **Federal Register**], may perform a driver or vehicle inspection, safety audit, or investigation if the employee or contractor maintains the appropriate certification under this subpart.

§ 385.209 Requirements to obtain and maintain certification to conduct driver or vehicle inspections.

(a) *Certification.* An individual may conduct driver or vehicle inspections under this subpart only if the individual meets the requirements of § 385.207(b), or meets requirements as specified in the Commercial Vehicle Safety Alliance's ''Operational Policy 4: Inspector Training and Certification'' (incorporated by reference, see § 385.4). The individual may conduct a driver or vehicle inspection only at a level for which the individual is certified.

(b) *Maintaining certification and obtaining recertification.* An individual who qualifies to conduct driver or vehicle inspections under this section must meet the requirements for maintaining certification or obtaining recertification as specified in the Commercial Vehicle Safety Alliance's ''Operational Policy 4: Inspector Training and Certification.''

§ 385.211 Requirements to obtain and maintain certification to conduct safety audits or investigations.

(a) *Certification.* An individual may conduct safety audits or investigations under this subpart only if the individual meets the requirements of § 385.207(b), or meets the requirements specified in FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits'' (incorporated by reference, see § 385.4).

(b) *Maintaining certification and obtaining recertification.* An individual who qualifies to conduct safety audits or investigations under this section must maintain certification or obtain recertification by successfully completing the requirements specified in FMCSA's ''Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits.''

Issued under authority delegated in 49 CFR 1.87: June 26, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–14224 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2018–0030; FF09M21200–189–FXMB1231099BPP0]

RIN 1018–BD10

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2019–20 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2019–20 migratory bird hunting season.

DATES: You must submit comments on the proposed regulations by August 7, 2019.

ADDRESSES: *Comments:* You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2018–0030.
- *U.S. mail or hand delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2018–0030; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION:

New Process for the Annual Migratory Game Bird Hunting Regulations

As part of the Department of the Interior's retrospective regulatory review, 3 years ago we developed a schedule for migratory game bird hunting regulations that is more efficient and provides hunting season dates much earlier than was possible under the old process. Under the new process, we develop proposed hunting season frameworks for a given year in the fall of the prior year. We then finalize those frameworks a few months later, thereby enabling the State agencies to select and publish their season dates in early summer. We provided a detailed overview of the new process in the August 3, 2017, **Federal Register** (82 FR 36308).

Special Migratory Bird Hunting Regulations for Indian Tribes

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal hunters on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal hunters, with hunting by nontribal hunters on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal hunters on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal hunters on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for tribal members on ceded lands. Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification.

We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations, reviewed the current status of migratory bird hunting on Federal Indian reservations, and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal hunters on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, and we may modify regulations or establish experimental special hunts, after evaluation of information obtained by the Tribes.

We conclude the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Further, the guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We conclude they have been tested adequately, and, therefore, we made them final beginning with the 1988–89 hunting season (53 FR 31612, August 18, 1988). We should stress here, however, that use of the guidelines is not mandatory, and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Regulations Schedule for 2019

On June 14, 2018, we published a proposal to amend title 50 of the Code of Federal Regulations (CFR) at part 20 (83 FR 27836). The proposal provided a

background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the third in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Major steps in the 2019–20 regulatory cycle relating to open public meetings and **Federal Register** notifications were illustrated in the diagram at the end of the June 14, 2018, proposed rule (83 FR 27836).

On September 21, 2018, we published in the **Federal Register** (83 FR 47868) a second document providing supplemental proposals for migratory bird hunting regulations. The September 21 supplement also provided detailed information on the 2019–20 regulatory schedule and re-announced the Service Regulations Committee and Flyway Council meetings.

On October 16–17, 2018, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory game birds and developed recommendations for the 2019–20 regulations for these species.

On April 17, 2019, we published in the **Federal Register** (84 FR 16152) the proposed frameworks for the 2019–20 season migratory bird hunting regulations.

Population Status and Harvest

Each year we publish various species status reports that provide detailed information on the status and harvest of migratory game birds, including information on the methodologies and results. These reports are available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our website at *https://www.fws.gov/birds/surveys-and-data/reports-and-publications/population-status.php.*

We used the following reports: Adaptive Harvest Management, 2019 Hunting Season (September 2018); American Woodcock Population Status, 2018 (August 2018); Band-tailed Pigeon Population Status, 2018 (August 2018); Migratory Bird Hunting Activity and Harvest During the 2016–17 and 2017–18 Hunting Seasons (August 2018); Mourning Dove Population Status, 2018 (August 2018); Status and Harvests of Sandhill Cranes, Mid-continent, Rocky Mountain, Lower Colorado River Valley and Eastern Populations, 2018 (August 2018); and Waterfowl Population Status, 2018 (August 2018).

Hunting Season Proposals From Indian Tribes and Organizations

For the 2019–20 hunting season, we received requests from 26 Tribes and Indian organizations. In this proposed rule, we respond to these 26 requests and also evaluate anticipated requests for 5 Tribes from whom we usually hear but from whom we have not yet received proposals. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

The proposed frameworks for flyway regulations were published in the **Federal Register** on April 19, 2019 (84 FR 16152). As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 31 Tribes that meet the established criteria or have recently proposed seasons are shown below.

(a) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990, which addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, tribal regulations for nontribal hunters would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose, duck, and coot season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For tribal members, the Tribe proposes outside frameworks for ducks and geese of September 1, 2019, through March 9, 2020. Daily bag and possession limits were not proposed for tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by nontribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2019–20 hunting season.

(b) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeastern and east-central Minnesota and the Band's Reservation near Duluth.

The band's proposal for 2019–20 is essentially the same as that approved last year. The proposed 2019–20 waterfowl hunting season regulations for Fond du Lac are as follows:

Ducks

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 9 black ducks, 9 scaup, 9 wood ducks, 9 redheads, 9 pintails, and 9 canvasbacks.

B. Reservation:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 6 black ducks, 6 scaup, 6 redheads, 6 pintails, 6 wood ducks, and 6 canvasbacks.

Mergansers

A. 1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

B. Reservation:

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese: All Areas

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 20 geese.

Sandhill Cranes: 1854 and 1837 Ceded Territories Only

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: Two sandhill cranes. A crane carcass tag is required prior to hunting.

Tundra and Trumpeter Swans: Reservation Only

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: One swan. A swan carcass tag is required prior to hunting.

Coots and Common Moorhens (Common Gallinules): All Areas

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails: All Areas

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: All Areas

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: Eight common snipe.

Woodcock: All Areas

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: Three woodcock.

Mourning Dove: All Areas

Season Dates: Begin September 1 and end November 30, 2019.

Daily Bag Limit: 30 mourning doves.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits for migratory birds. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese, and fewer than 10 sandhill cranes.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewa Indians.

(c) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2019–20 season, the Tribe requests that the tribal member duck season run from September 1, 2019, through January 20, 2020. A daily bag limit of 35 would include no more than 8 pintail, 4 canvasback, 5 hooded merganser, 8 black ducks, 8 wood ducks, 8 redheads, and 20 mallards (only 10 of which may be hens).

For Canada and snow geese, the Tribe proposes a September 1, 2019, through February 15, 2020, season. For white-fronted geese and brant, the Tribe proposes a September 20 through December 30, 2019, season. The daily bag limit for Canada and snow geese would be 15, and the daily bag limit for white-fronted geese including brant would be 5 birds. We further note that, based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 through November 14, 2019, season. The daily bag limit will not exceed five birds. For mourning doves, snipe, and rails, the Tribe proposes a September 1 through November 14, 2019, season. The daily bag limit would be 15 mourning dove, 10 snipe, and 10 rail.

For sandhill crane, the Tribe proposes a September 1 through November 14, 2019, season. The daily bag limit would be 2 birds and a season limit of 10 birds.

For snipe and rails, the Tribe proposes a September 1 through November 14, 2019, season. The daily bag limit would be 10 birds per species.

Shooting hours would be from one-half hour before sunrise to one-half hour after sunset. All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2013–14 hunting season indicated that approximately 30 tribal hunters harvested an estimated 100 ducks and 45 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians 2019–20 special migratory bird hunting proposal.

(d) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized, off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), an intertribal agency exercising delegated natural resource management and regulatory authority from its member Tribes in portions of Wisconsin, Michigan, and Minnesota. Beginning in 1986, a Tribal season on ceded lands in the western portion of the Michigan Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources. We have approved regulations for Tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, GLIFWC requested, and we approved, regulations to permit Tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin originally concurred with the regulations, although both Wisconsin and Michigan have raised various concerns over the years. Minnesota did not concur with the original regulations, stressing that the State would not

recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. In 1999, the U.S. Supreme Court upheld the existence of the tribes' treaty reserved rights in *Minnesota* v. *Mille Lacs Band,* 199 S. Ct. 1187 (1999).

We acknowledge all of the States' concerns, but point out that the U.S. Government has recognized the Indian treaty reserved rights, and that acceptable hunting regulations have been successfully implemented in Minnesota, Michigan, and Wisconsin. Consequently, in view of the above, we have approved regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of treaty reserved rights for band members to hunt and fish was pivotal in our decision to approve a 1991–92 season for the 1836 ceded area in Michigan. Since then, in the 2007 Consent Decree, the 1836 Treaty Tribes and the Michigan Department of Natural Resources and Environment established court-approved regulations pertaining to off-reservation hunting rights for migratory birds.

For 2019, GLIFWC proposes off-reservation special migratory bird hunting regulations on behalf of the member Tribes of the Voigt Intertribal Task Force of GLIFWC (for the 1837 and 1842 Treaty areas in Wisconsin and Michigan), the Mille Lacs Band of Ojibwe and the six Wisconsin Bands (for the 1837 Treaty area in Minnesota), and the Bay Mills Indian Community (for the 1836 Treaty area in Michigan). Member Tribes of the Task Force are as follows:

Wisconsin	Minnesota	Michigan
Bad River Band of the Lake Superior Tribe of Chippewa Indians.	Mille Lacs Band of Chippewa Indians	Lac Vieux Desert Band of Chippewa Indians.
Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	Fond du Lac Band of Lake Superior Chippewa Indians.	Keweenaw Bay Indian Community.
Lac du Flambeau Band of Lake Superior Chippewa Indians.		
Red Cliff Band of Lake Superior Chippewa Indians.		
St. Croix Chippewa Indians of Wisconsin.		
Sokaogon Chippewa Community (Mole Lake Band).		

This year, GLIFWC proposes to continue certain experimental regulatory changes approved during the 2017–18 season but first implemented last year (83 FR 5037, February 5, 2018). First, in the 1837 and 1842 Treaty Areas, GLIFWC allows up to 50 Tribal hunters to use electronic calls for any open season under a limited and experimental design under a special Tribal permit. In addition to obtaining a special permit, the Tribal hunter is required to complete and submit a hunt diary for each hunt where electronic calls were used. Second, GLIFWC allows the take of migratory birds (primarily waterfowl) with the use of hand-held nets, hand-held snares, and/or capture of birds by hand in the 1837 and 1842 Treaty Areas. This use of nets, snares, or hand-capture includes the take of birds at night. Both the use of electronic calls and the use of nets, snares, or hand-capture are considered 3-year experimental seasons. We propose to approve the continuation of all these experimental proposals again this year. For more specific discussion on these regulatory changes, we refer the reader to the August 27, 2017, and February 5, 2018, rules (82 FR 39716 and 83 FR 5037).

Under GLIFWC's proposed 2019–20 regulations, GLIFWC expects total ceded territory harvest to be approximately 2,000 to 3,000 ducks, 400 to 600 geese, 50 sandhill cranes, and 20 swans, which is roughly similar to anticipated levels in the previous year.

Recent GLIFWC harvest surveys (1996–98, 2001, 2004, 2007–08, 2011, 2012, and 2015) indicate that tribal off-reservation waterfowl harvest has averaged fewer than 1,100 ducks and 250 geese annually. In the latest survey year for which we have specific results (2015), an estimated 297 hunters hunted a total of 2,190 days and harvested 2,727 ducks (1.2 ducks per day) and 639 geese. The greatest number of ducks reported harvested in a single day was 10, while the highest number of geese reported taken on a single outing was 6. Mallards, wood ducks, and blue-winged teal composed about 72 percent of the duck harvest. Two sandhill cranes were reported harvested in each of the first three Tribal sandhill crane seasons, with three reported harvested in 2015. Two swans were harvested in 2017, and two swans were registered in 2018. About 81 percent of the estimated hunting days took place in Wisconsin, with the remainder occurring in Michigan. As in past years, most hunting took place in or near counties with reservations. Overall, analysis of hunter survey data over 1996–2015 indicates a general downward, or flat, trend in both harvest and hunter participation.

The proposed 2019–20 waterfowl hunting season regulations apply to all treaty areas (except where noted) for GLIFWC as follows:

Ducks

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 50 ducks in the 1837 and 1842 Treaty Area; 30 ducks in the 1836 Treaty Area.

Mergansers

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2019. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

A. Coots and Common Moorhens (Common Gallinules):

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails:

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag and Possession Limits: 20, singly, or in the aggregate, 25.

C. Common Snipe:

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 16 common snipe.

D. Woodcock:

Season Dates: Begin September 4 and end December 31, 2019.

Daily Bag Limit: 10 woodcock.

E. Mourning Dove: 1837 and 1842 Ceded Territories only.

Season Dates: Begin September 1 and end November 29, 2019.

Daily Bag Limit: 15 mourning doves.

F. Sandhill Cranes:

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 5 cranes and no seasonal bag limit in the 1837 and 1842 Treaty areas; 3 crane and no seasonal bag limit in the 1836 Treaty area.

G. Swans: 1837 and 1842 Ceded Territories only.

Season Dates: Begin September 1 and end December 31, 2019.

Daily Bag Limit: 5 swans. All harvested swans must be registered by presenting the fully-feathered carcass to a tribal registration station or GLIFWC warden. If the total number of trumpeter swans harvested reaches 10, the swan season will be closed by emergency tribal rule.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. There are no possession limits, with the exception of 2 swans (in the aggregate) and 25 rails (in the aggregate). For purposes of enforcing bag limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective section 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for nontribal members as published at 64 FR 29799, June 3, 1999.

5. There are no shell limit restrictions.

6. Hunting hours are from 30 minutes before sunrise to 30 minutes after sunset, except that, within the 1837 and 1842 Ceded Territories, hunters may use non-mechanical nets or snares that are operated by hand to take those birds subject to an open hunting season at any time (see #8 below for further information). Hunters shall also be permitted to capture, without the aid of other devices (*i.e.,* by hand) and immediately kill birds subject to an open season, regardless of the time of day.

7. An experimental application of electronic calls will be implemented in the 1837 and 1842 Ceded Territories. Up to 50 tribal hunters will be allowed to use electronic calls. Individuals using these devices will be required to obtain a special permit; they will be required to complete a hunt diary for each hunt where electronic calls are used; and they will be required to submit the hunt diary to the Commission within 2 weeks of the end of the season in order to be eligible to obtain a permit for the following year. Required information will include the date, time, and location of the hunt; number of hunters; the number of each species harvested per hunting event; if other hunters were in the area, any interactions with other hunters; and other information deemed appropriate. Diary results will be summarized and documented in a Commission report, which will be submitted to the Service. Barring unforeseen results, this experimental application would be replicated for 3 years (through the 2020–21 season), after which a full evaluation would be completed.

8. Within the 1837 and 1842 Ceded Territories, tribal members will be allowed to use non-mechanical, hand-operated nets (*i.e.,* throw/cast nets or hand-held nets typically used to land fish) and hand-operated snares, and may chase and capture migratory birds without the aid of hunting devices (*i.e.,* by hand). At this time, non-attended nets or snares shall not be authorized under this regulation. Tribal members using nets or snares to take migratory birds, or taking birds by hand, will be required to obtain a special permit; they will be required to complete a hunt diary for each hunt where these methods are used; and they will be required to submit the hunt diary to the Commission within 2 weeks of the end of the season in order to be eligible to obtain a permit to net migratory birds for the following year. Required information will include the date, time, and location of the hunt; number of hunters; the number of each species harvested per hunting event; and other information deemed appropriate. Diary results will be summarized and documented in a Commission report, which will be submitted to the Service. Barring unforeseen results, this experimental application would be replicated for 3 years (through the 2020–21 season), after which a full evaluation would be completed.

We propose to approve the above GLIFWC regulations for the 2019–20 hunting season.

(e) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposes a 2019–20 waterfowl and Canada goose season beginning October 6, 2019, and a closing date of November 30, 2019. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a daily bag limit for Canada geese of two. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2017–18 season, estimated duck harvest was 82. The species composition included mainly mallards, gadwall, and bufflehead. The estimated harvest of geese was six birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2019–20 waterfowl harvest would be around 300 ducks and 30 geese.

We propose to approve the Tribe's requested 2019–20 hunting seasons.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914 and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational memorandum of understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit and 800 acres of reservation land with a guide for waterfowl hunting. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

The Kalispel Tribe proposes tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal hunters on Tribally managed lands, the Tribe requests the seasons open at the earliest possible date and remain open, for the maximum amount of open days. Specifically, the Tribe requests a season for ducks run September 21–22 and September 28–29, 2019, and from October 1, 2019, to January 8, 2020. In that period, nontribal hunters would be allowed to hunt approximately 107 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

For nontribal hunters on Tribally managed lands, the Tribe also requests a season for geese run September 21–22 and September 28–29, 2019, and from October 1, 2019, to January 8, 2020. Total number of days should not exceed 107. Nontribal hunters should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports past nontribal harvest of 1.5 ducks per day. Under the proposal, the Tribe expects harvest to be similar to last year, that is, fewer than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed migratory bird hunting and conservation stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel Tribe proposes season dates for ducks of October 1, 2019, through January 31, 2020, and for geese of September 10, 2019, through January 31, 2020. Daily bag and possession limits would parallel those in the Federal regulations contained in 50 CFR part 20.

The Tribe reports that there was no tribal harvest. Under the proposal, the Tribe expects harvest to be fewer than 200 birds for the season with fewer than 100 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe, since these dates conform to Federal flyway frameworks for the Pacific Flyway.

(g) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamath Tribe. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal regulatory enforcement officers monitor tribal harvest by frequent bag checks and hunter interviews.

For the 2019–20 seasons, the Tribe requests proposed season dates of October 5, 2019, through January 31, 2020. Daily bag limits would be 9 for ducks, 9 for geese, and 9 for coot, with possession limits twice the daily bag limit. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve those 2019–20 special migratory bird hunting regulations.

(h) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2019–20 season, the Tribe requests a duck season starting on September 14 and ending December 31, 2019, and a goose season to run from September 14 through December 31, 2019. Daily bag limits for ducks would be 10, including no more than 5 pintail, 5 canvasback, and 5 black ducks. Daily bag limits for geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 250 to 500 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 2019–20 special migratory bird hunting season.

(i) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

The Little River Band of Ottawa Indians (LRBOI) is a self-governing, federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties. The Band proposes regulations to govern the hunting of migratory birds by Tribal members within the 1836 Ceded Territory as well as on the Band's Reservation.

LRBOI proposes a duck and merganser season from September 1, 2019, through January 26, 2020. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black ducks, 3 wood ducks, 3 redheads, 6 mallards (only 2 of which may be a hen), 1 bufflehead, and 1 hooded merganser. Possession limits would be twice the daily bag limit.

For coots and gallinules, the Tribe proposes a September 14, 2019, through January 26, 2020, season. Daily bag limits would be five coot and five gallinule.

For white-fronted geese, snow geese, and brant, the Tribe proposes a September 7 through December 9, 2019, season. Daily bag limits would be five geese.

For Canada geese only, the Tribe proposes a September 1, 2019, through February 3, 2020, season with a daily bag limit of five. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, the Tribe proposes a September 1 to November 11, 2019, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitors harvest through mail surveys. General conditions are as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2019–20 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20. Shooting hours will be from one-half hour before sunrise to sunset.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We plan to approve Little River Band of Ottawa Indians' 2019–20 special migratory bird hunting seasons.

(j) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

The Little Traverse Bay Bands of Odawa Indians (LTBB) is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2019–20 season, the LTBB proposes regulations similar to those of other Tribes in the 1836 treaty area. The LTBB proposes the regulations to govern the hunting of migratory birds by tribal members on the LTBB reservation and within the 1836 Treaty Ceded Territory. The tribal member duck and merganser season would run from September 1, 2019, through January 31, 2020. A daily bag limit of 20 ducks and 10 mergansers would include no more than 5 hen mallards, 5 pintail, 5 canvasback, 5 scaup, 5 hooded merganser, 5 black ducks, 5 wood ducks, and 5 redheads.

For Canada geese, the LTBB proposes a September 1, 2019, through February 8, 2020, season. The daily bag limit for Canada geese would be 20 birds. We further note that, based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the LTBB. Possession limits are twice the daily bag limit.

For woodcock, the LTBB proposes a September 1 to December 1, 2019, season. The daily bag limit will not exceed 10 birds. For snipe, the LTBB proposes a September 1 to December 31, 2019, season. The daily bag limit will not exceed 16 birds. For mourning doves, the LTBB proposes a September 1 to November 14, 2019, season. The daily bag limit will not exceed 15 birds. For Virginia and sora rails, the LTBB proposes a September 1 to December 31, 2019, season. The daily bag limit will not exceed 20 birds per species. For coots and gallinules, the LTBB proposes a September 15 to December 31, 2019, season. The daily bag limit will not exceed 20 birds per species. The possession limit will not exceed 2 days' bag limit for all birds.

The LTBB also proposes a sandhill crane season to begin September 1 and end December 1, 2019. The daily bag limit will not exceed two birds. The possession limit will not exceed two times the bag limit.

All other Federal regulations contained in 50 CFR part 20 would apply.

Harvest surveys from the 2015–16 hunting season indicated that approximately 15 hunters harvested 9 different waterfowl species. No sandhill cranes were reported harvested during the 2015–16 season. The LTBB proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the LTBB proposes monitoring the harvest of Southern James Bay Canada geese and sandhill cranes to assess any impacts of tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2019–20 special migratory bird hunting regulations.

(k) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and NonTribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via a memorandum of agreement (MOA) with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and U.S. Army Corps of Engineers-taken lands. For the 2019–20 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and nontribal hunters.

For the 2019–20 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, or the maximum number of days allowed by Federal frameworks in the High Plains Management Unit for this season. The Tribe proposes a duck season from October 5, 2019, through January 9, 2020. The daily bag limit would be six birds or the maximum number that Federal regulations allow, including no more than two hen mallard and five mallards total, two pintail, two redhead, two canvasback, three wood duck, three scaup, and one mottled duck. Two bonus blue-winged teal are allowed during October 6–21, 2019. The daily bag limit for mergansers would be five, only two of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be three times the daily bag limits.

The Tribe's proposed nontribal-member Canada goose season would run from October 26, 2019, through February 9, 2020 (107–day season length), with a daily bag limit of six Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 26, 2019, through January 21, 2020, with daily bag and possession limits concurrent with Federal regulations. The Tribe's proposed nontribal-member light goose season would run from October 26, 2019, through February 9, 2020, and February 11 through March

10, 2020. The light goose daily bag limit would be 20 or the maximum number that Federal regulations allow with no possession limits.

The Tribe proposes a dove season for non-Tribal members from September 1 through November 29, 2019. The dove daily bag limit would be 15.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from September 1, 2019, through March 10, 2020. The daily bag limit would be six ducks, including no more than two hen mallard and five mallards total, two pintail, two redheads, two canvasback, three wood ducks, three scaup, two bonus teal during the first 16 days of the season, and one mottled duck or the maximum number that Federal regulations allow. The daily bag limit for mergansers would be five, only two of which could be hooded mergansers. The daily bag limit for coots would be 15. Possession limits would be three times the daily bag limits.

The Tribe's proposed Canada goose season for tribal members would run from September 1, 2019, through March 10, 2020, with a daily bag limit of six Canada geese. The Tribe's proposed white-fronted goose tribal season would run from September 1, 2019, through March 10, 2020, with a daily bag limit of two white-fronted geese or the maximum number that Federal regulations allow. The Tribe's proposed light goose tribal season would run from September 1, 2019, through March 10, 2020. A conservation order will also occur March 11, through May 1, 2020. The light goose daily bag limit would be 20 or the maximum number that Federal regulations allow, with no possession limits.

The Tribe proposes a dove season for Tribal members from September 1, 2019, through January 31, 2020. The dove daily bag limit would be 15.

In the 2017 season, nontribal members harvested 1,527 geese and 1,039 ducks. In the 2017 season, duck harvest species composition was primarily mallard (59 percent), green-winged teal (10 percent), and wigeon (6 percent).

The Tribe anticipates a duck and goose harvest similar to those of the previous years. All basic Federal regulations contained in 50 CFR part 20, including the use of nontoxic shot, Migratory Bird Hunting and Conservation Stamps, etc., would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We plan to approve the Tribe's requested regulations for the Lower Brule Reservation if the seasons' dates fall within final Federal flyway frameworks (applies to nontribal hunters only).

(l) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently, and it is our understanding that the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for tribal members for the 2019–20 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

For the 2019–20 season, we have yet to hear from the Lower Elwha Klallam Tribe. The Tribe usually requests special migratory bird hunting regulations for ducks (including mergansers), geese, coots, band-tailed pigeons, snipe, and mourning doves. The Lower Elwha Klallam Tribe usually requests a duck and coot season from September 13 to January 4. The daily bag limit will be seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck will be one per season. The coot daily bag limit will be 25. The possession limit will be twice the daily bag limit, except as noted above.

For geese, the Tribe usually requests a season from September 13 to January 4. The daily bag limit will be four, including no more than three light geese. The season on Aleutian Canada geese will be closed.

For brant, the Tribe usually proposes to close the season.

For mourning doves, band-tailed pigeon, and snipe, the Tribe usually requests a season from September 1 to January 11, with a daily bag limit of 10, 2, and 8, respectively. The possession limit will be twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe typically anticipates harvest to be fewer than 10 birds. Tribal reservation police and Tribal fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

The Service proposes to approve the special migratory bird hunting regulations for the Lower Elwha Klallam Tribe, upon receipt of their proposal.

(m) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603.

The Makah Indian Tribe proposes a duck and coot hunting season from September 21, 2019, to January 25, 2020. The daily bag limit is seven ducks, including no more than five mallards (only two hen mallard), one canvasback, one pintail, three scaup, and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

For geese, the Tribe proposes that the season open on September 21, 2019, and close January 25, 2020. The daily bag limit for geese is four and one brant. The Tribe notes that there is a year-round closure on Aleutian and dusky Canada geese.

For band-tailed pigeons, the Tribe proposes that the season open September 21 and close October 27, 2019. The daily bag limit for band-tailed pigeons is two.

The Tribe anticipates that harvest under this regulation will be relatively low since there are no known dedicated waterfowl hunters and any harvest of waterfowl or band-tailed pigeons is usually incidental to hunting for other species, such as deer, elk, and bear. The Tribe expects fewer than 50 ducks and 10 geese to be harvested during the 2019–20 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 mile of an occupied area.

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation.

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited.

(6) The use of dogs is permitted to hunt waterfowl.

The Service proposes to approve the Makah Indian Tribe's requested 2019–20 special migratory bird hunting regulations.

(n) Muckleshoot Indian Tribe, Auburn, Washington (Tribal Members Only)

The Muckleshoot Indian Tribe Wildlife Program has submitted a migratory bird hunting proposal for 2019–2020. The Muckleshoot Tribe is a federally recognized Tribe with reserved hunting rights under the Treaty of Medicine Creek 1854 and Treaty of Point Elliott 1855. Hunting occurs within the treaty areas as well as on lands traditionally hunted by the Muckleshoot Indian Tribe.

The Muckleshoot Indian Tribe proposes a duck and coot hunting season from September 1, 2019, to March 10, 2020. The daily bag limit is seven ducks, including no more than two hen mallard, two canvasback, two pintail, three scaup, two redhead, two scoter, two long-tailed duck, and two goldeneye. The daily bag limit for coots is 25. The Tribe has a limit on harlequin ducks of one per season.

For geese, the Tribe proposes that the season open on September 1, 2019, and close March 10, 2020. The daily bag limit for geese is 4 Canada geese, 6 light geese, 10 white-fronted geese, and 2 brant. The Tribe notes that there is a year-round closure on dusky Canada geese.

For band-tailed pigeons, mourning dove, and snipe, the Tribe proposes that the season open September 1, 2019, and close March 10, 2020. The daily bag limits are 2, 15, and 8, respectively.

The Tribe anticipates that harvest under this regulation will be relatively low since no known harvest has occurred over the past 20 years, and there are no known dedicated waterfowl or other migratory bird hunters. Harvest will be for personal cultural and subsistence purposes. We anticipate fewer than 100 ducks and 100 geese may be harvested.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe:

(1) Hunting can occur on reservation and off reservation on lands where the Tribe has treaty-reserved hunting rights, or has documented traditional use.

(2) Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half after sunset.

(3) Hunters must be eligible enrolled Muckleshoot Tribal members and must carry their Tribal ID while hunting.

(4) Tribal members hunting migratory birds must also have a combined Migratory Bird Hunting Permit and Harvest Report Card.

(5) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

(6) Hunting for migratory birds is with shotgun only. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Service proposes to approve the Muckleshoot Indian Tribe's requested 2019–20 special migratory bird hunting regulations.

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

Navajo Nation for the 2019–20 requests the earliest opening dates and longest duck, merganser, Canada goose, and coot seasons, and the same daily bag and possession limits allowed to Pacific Flyway States under final Federal frameworks for tribal and nontribal members.

For both mourning dove and band-tailed pigeons, the Navajo Nation usually proposes seasons of September 1–30, 2019, with daily bag limits of 10 and 5, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter age 16 or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), which must be signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe usually anticipates a total harvest of fewer than 500 mourning doves; fewer than 10 band-tailed pigeons; fewer than 1,000 ducks, coots, and mergansers; and fewer than 1,000 Canada geese for the 2019–19 season. The Tribe measures harvest by mail survey forms. Through the established Navajo Nation Code, titles 17 and 18, and 23 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource.

We propose to approve the Navajo Nation's 2019–20 special migratory bird hunting regulations.

(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and nontribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced the Tribe's hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin, and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

For the 2019–20 season, the Tribe submitted a proposal requesting special migratory bird hunting regulations. For ducks, the Tribe's proposal describes the general outside dates as being September 14 through December 8, 2019. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintails, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2019, with a daily bag limit of five Canada geese. If a quota of 500 geese is attained before the season concludes, the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 1 and November 3, 2019, with a daily bag and possession limit of two and four, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 3, 2019, with a daily bag

and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Bird Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

The Service proposes to approve the 2019–20 special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

(q) Point No Point Treaty Council Tribes, Kingston, Washington (Tribal Members Only)

We are establishing uniform migratory bird hunting regulations for tribal members on behalf of the Point No Point Treaty Council Tribes, consisting of the Port Gamble S'Klallam and Jamestown S'Klallam Tribes. The two tribes have reservations and ceded areas in northwestern Washington State and are the successors to the signatories of the Treaty of Point No Point of 1855. These proposed regulations will apply to tribal members both on and off reservations within the Point No Point Treaty Areas; however, the Port Gamble S'Klallam and Jamestown S'Klallam Tribal season dates differ only where indicated below.

For the 2019–20 season, the Point No Point Treaty Council requests special migratory bird hunting regulations for both the Jamestown S'Klallam and Port Gamble S'Klallam Tribes. For ducks, the Jamestown S'Klallam Tribe season would open September 1, 2019, and close March 10, 2020, and coots would open September 7, 2019, and close February 2, 2020. The Port Gamble S'Klallam Tribes duck and coot seasons would open from September 1, 2019, to March 10, 2020. The daily bag limit would be seven ducks, including no more than two hen mallards, one canvasback, one pintail, two redhead, and four scoters. The daily bag limit for coots would be seven. The daily bag limit and possession limit on harlequin ducks would be one per season. The daily possession limits are double the daily bag limits except where noted.

For geese, the Point No Point Treaty Council proposes the season open on September 7, 2019, and close March 10, 2020, for the Jamestown S'Klallam Tribe, and open on September 1, 2019, and close March 10, 2020, for the Port Gamble S'Klallam Tribe. The daily bag limits for Canada geese, light geese, and white-fronted geese would be 5, 3, and 10, respectively. The Council notes that there is a year-round closure on dusky Canada geese. For brant, the Council proposes the season open on November 9, 2019, and close January 31, 2020, for the Port Gamble S'Klallam Tribe, and open on January 11 and close January 26, 2020, for the Jamestown S'Klallam Tribe. The daily bag limit for brant would be two.

For band-tailed pigeons, the Port Gamble S'Klallam Tribe season would open September 1, 2019, and close March 10, 2020. The Jamestown S'Klallam Tribe season would open September 7, 2019, and close January 20, 2020. The daily bag limit for band-tailed pigeons would be two. For snipe, the Port Gamble S'Klallam Tribe season would open September 1, 2019, and close March 10, 2020. The Jamestown S'Klallam Tribe season would open September 7, 2019, and close March 10, 2020. The daily bag limit for snipe would be eight. For mourning dove, the Port Gamble S'Klallam Tribe season would open September 1, 2019, and close January 31, 2020. The Jamestown S'Klallam Tribe would open September 7, 2019, and close January 20, 2020. The daily bag limit for mourning dove would be 10.

The Tribe anticipates a total harvest of fewer than 100 birds for the 2019–20 season. The tribal fish and wildlife enforcement officers have the authority to enforce these tribal regulations.

We propose to approve the Point No Point Treaty Council Tribe's requested 2019–20 special migratory bird seasons.

(r) Saginaw Tribe of Chippewa Indians, Mt. Pleasant, Michigan (Tribal Members Only)

The Saginaw Tribe of Chippewa Indians is a federally recognized, self-governing Indian Tribe, located on the Isabella Reservation lands bound by Saginaw Bay in Isabella and Arenac Counties, Michigan.

For ducks, mergansers, and common snipe, the Tribe proposes outside dates as September 1, 2019, through January 31, 2020. The Tribe proposes a daily bag limit of 20 ducks, which could include no more than 5 each of the following: hen mallards, wood duck, black duck, pintail, red head, scaup, and canvasback. The merganser daily bag limit is 10, with no more than 5 hooded mergansers and 16 for common snipe.

For geese, coot, gallinule, sora, and Virginia rail, the Tribe requests a season from September 1, 2019, to January 31, 2020. The daily bag limit for geese is 20, in the aggregate. The daily bag limit for coot, gallinule, sora, and Virginia rail is 20 in the aggregate.

For woodcock and mourning dove, the Tribe proposes a season between September 1, 2019, and January 31, 2020, with daily bag limits of 10 and 25, respectively.

For sandhill crane, the Tribe proposes a season between September 1, 2019, and January 31, 2020, with a daily bag limit of one.

All Saginaw Tribe members exercising hunting treaty rights are required to comply with Tribal Ordinance 11. Hunting hours would be from one-half hour before sunrise to one-half hour after sunset. All other regulations in 50 CFR part 20 apply, including the use of only nontoxic shot for hunting waterfowl.

The Service proposes to approve the request for 2019–20 special migratory bird hunting regulations for the Saginaw Tribe of Chippewa Indians.

(s) Sauk-Suiattle Indian Tribe, Darrington, Washington (Tribal Members Only)

We have yet to hear from the Sauk-Suiattle Indian Tribe (SSIT), but it is our understanding that the SSIT will request a 2019–20 hunting season on all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855. This 2019–20 proposal would be the first year the Tribe is proposing a special migratory bird hunting season. The Tribe's reservation is located in Darrington, Washington, just west of the North Cascade Mountain range in Skagit County on the Sauk and Suiattle Rivers. The Tribe owns and manages all the land on the reservation and some lands surrounding or near the reservation in Skagit and Snohomish Counties. All of the lands that are Tribal or Reservation lands are closed for non-Tribal hunting, unless opened by an SSIT Special Regulation.

The Tribe usually proposes special migratory bird hunting regulations for ducks, geese, brant, and coot with outside dates of September 1 through January 31. The Tribe usually proposes a daily bag limit of 10 ducks, 5 geese, 5 brant, and 25 coot.

Hunting hours would be from one-half hour before sunrise to one-half hour after sunset. All other regulations in 50 CFR part 20 apply, including the use of only nontoxic shot for hunting waterfowl.

The Service proposes to approve the request for 2019–20 special migratory bird hunting regulations for the Sauk-Suiattle Indian Tribe, upon receipt of their proposal.

(t) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only)

The Sault Ste. Marie Tribe of Chippewa Indians is a federally recognized, self-governing Indian Tribe, distributed throughout the eastern Upper Peninsula and northern Lower Peninsula of Michigan. The Tribe has retained the right to hunt, fish, trap, and gather on the lands ceded in the Treaty of Washington (1836).

The Tribe proposes special migratory bird hunting regulations. For ducks, mergansers, and common snipe, the Tribe proposes outside dates as September 15 through December 31, 2019. The Tribe proposes a daily bag limit of 20 ducks, which could include no more than 10 mallards (5 hen mallards), 5 wood duck, 5 black duck, and 5 canvasbacks. The merganser daily bag limit is 10 in the aggregate and 16 for common snipe.

For geese, teal, coot, gallinule, sora, and Virginia rail, the Tribe requests a season from September 1 to December 31, 2019. The daily bag limit for geese is 20 in the aggregate. The daily bag limit for coot, teal, gallinule, sora, and Virginia rail is 20 in the aggregate.

For woodcock, the Tribe proposes a season between September 2 and December 1, 2019, with a daily bag and possession limit of 10 and 20, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 14, 2019, with a daily bag and possession limit of 10 and 20, respectively.

In 2017, the total estimated waterfowl hunters were 4,573 harvesting approximately 880 ducks. All Sault Ste. Marie Tribe members exercising hunting treaty rights within the 1836 Ceded Territory are required to submit annual harvest reports including date of harvest, number and species harvested, and location of harvest. Hunting hours would be from one-half hour before sunrise to one-half hour after sunset. All other regulations in 50 CFR part 20 apply, including the use of only nontoxic shot for hunting waterfowl.

The Service proposes to approve the request for 2019–20 special migratory bird hunting regulations for the Sault Ste. Marie Tribe of Chippewa Indians.

(u) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they would provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2019–20 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2019–20 hunting season, the Shoshone–Bannock Tribes request a continuous duck (including mergansers and coots) season, with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States under the final Federal frameworks. The Tribes propose a duck and coot season with, if the same number of hunting days is permitted as last year, an opening date of October 5, 2019, and a closing date of January 17, 2020. The Tribes anticipate harvest will be about 7,500 ducks.

The Tribes also request a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 5, 2019, and a closing date of January 17, 2020. The Tribes anticipate harvest will be about 5,000 geese.

The Tribes request a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 5, 2019, and a closing date of January 17, 2020.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone–Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year, and we propose to approve them for the 2019–20 hunting season if the seasons' dates fall within the final Federal flyway frameworks (applies to nontribal hunters only).

(v) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Since 1996, the Service and the Point No Point Treaty Tribes, of which the Skokomish Tribe was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes have been acting independently since 2005. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

We have yet to hear from the Skokomish Tribe for the 2019–20 season. The Skokomish Tribe usually requests a duck and coot season from September 16 to February 29. The daily bag limit is seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit, except as noted above.

For geese, the Tribe usually requests a season from September 16 to February 29. The daily bag limit is four, including no more than three light geese. The season on Aleutian Canada geese is closed. For brant, the Tribe proposes a season from November 1, 2019, to February 15, 2020, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe usually requests a season from September 16 to February 29, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be fewer than 150 birds. The Skokomish

Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's 2019–20 migratory bird hunting season, upon receipt of their proposal.

(w) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only)

The Spokane Tribe of Indians wishes to establish waterfowl seasons on their reservation for its membership to access as an additional resource. An established waterfowl season on the reservation will allow access to a resource for members to continue practicing a subsistence lifestyle.

The Spokane Indian Reservation is located in northeastern Washington State. The reservation comprises approximately 157,000 acres. The boundaries of the Reservation are the Columbia River to the west, the Spokane River to the south (now Lake Roosevelt), Tshimikn Creek to the east, and the 48th Parallel as the north boundary. Tribal membership comprises approximately 2,300 enrolled Spokane Tribal Members.

These proposed regulations would allow Tribal Members, spouses of Spokane Tribal Members, and first-generation descendants of a Spokane Tribal Member with a tribal permit and Federal Migratory Bird Hunting and Conservation Stamp an opportunity to utilize the reservation and ceded lands for waterfowl hunting. These regulations would also benefit tribal membership through access to this resource throughout Spokane Tribal ceded lands in eastern Washington. By Spokane Tribal Referendum, spouses of Spokane Tribal Members and children of Spokane Tribal Members not enrolled are allowed to harvest game animals within the Spokane Indian Reservation with the issuance of hunting permits.

The Tribe requests to establish duck seasons that would run from September 2, 2019, through January 31, 2020. The tribe is requesting the daily bag limit for ducks to be consistent with final Federal frameworks. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 2, 2019, and ending on January 31, 2020. The Tribe is requesting the daily bag limit for geese to be consistent with final Federal frameworks. The possession limit is twice the daily bag limit.

Based on the quantity of requests the Spokane Tribe of Indians has received, the Tribe anticipates harvest levels for the 2019–20 season for both ducks and geese to be fewer than 100 total birds, with goose harvest at fewer than 50. Hunter success will be monitored through mandatory harvest reports returned within 30 days of the season closure.

We propose to approve the Spokane Tribe's requested 2019–20 special migratory bird hunting regulations.

(x) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 2019–20 season, we have yet to hear from the Squaxin Island Tribe. The Tribe usually requests to establish duck and coot seasons that would run from September 1 through January 15. The daily bag limit for ducks would be five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots, the daily bag limit is 25. For snipe, the Tribe usually proposes that the season start on September 15 and end on January 15. The daily bag limit for snipe would be eight. For band-tailed pigeon, the Tribe usually proposes that the season start on September 1 and end on December 31. The daily bag limit would be five. The possession limit would be twice the daily bag limit.

The Tribe usually proposes a season on geese starting September 15 and ending on January 15. The daily bag limit for geese would be four, including no more than two snow geese. The season on Aleutian and cackling Canada geese would be closed. For brant, the Tribe usually proposes that the season start on September 1 and end on December 31. The daily bag limit for brant would be two. The possession limit would be twice the daily bag limit.

We propose to approve the Tribe's 2019–20 special migratory bird hunting regulations, upon receipt of their proposal.

(y) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. For the 2019–20 season, the Tribe requests regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, and Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S.* v. *Washington*).

The Tribe proposes their duck (including mergansers and coot) and goose seasons run from October 1, 2019, to March 10, 2020. The daily bag limit on ducks (including sea ducks and mergansers) is 10 including no more than seven mallards, 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. The daily bag limit for coot is 25. For geese, the daily bag limit is 6 Canada geese, 12 white-fronted geese, and 8 light geese. The season on brant is closed. Possession limits are totals of these three daily bag limits.

The Tribe proposes the snipe season run from October 1, 2019, to January 31, 2020. The daily bag limit for snipe is 10. Possession limits are three times the daily bag limit.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal law enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the Stillaguamish Tribe's request for 2019–20 special migratory bird hunting regulations.

(z) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian Tribe consisting of the Swinomish, Lower Skagit, Samish, and Kikialous. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in

the Puget Sound area north of Seattle, Washington.

For the 2019–20 season, the Tribal Community requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribe proposes their duck (including mergansers and coot) and goose seasons run from September 1, 2019, to March 9, 2020. The daily bag limit on ducks is 20. The daily bag limit for coot is 25. For geese, the daily bag limit is 10. The season on brant runs from September 1, 2019, to March 9, 2020. The daily bag limit is five.

The Tribe proposes the snipe season run from September 1, 2019, to March 9, 2020. The daily bag limit for snipe is 15. The Tribe proposes the mourning dove season run from September 1, 2019, to March 9, 2020. The daily bag limit for mourning dove is 15. The Tribe proposes the band-tailed pigeon season run from September 1, 2019, to March 9, 2020. The daily bag limit for band-tailed pigeon is three. The Swinomish Indian Tribal Community requests to have no possession limits.

The Community anticipates that the regulations will result in the harvest of approximately 600 ducks and 200 geese. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

We propose to approve these 2019–20 special migratory bird hunting regulations.

(aa) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members Only)

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

For ducks, mergansers, coot, and snipe, the Tribe proposes seasons for tribal members from September 1, 2019, through February 29, 2020. Daily bag and possession limits would be 15 and 30 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For coot, daily bag and possession limits are 25 and 50, respectively, and for snipe 8 and 16, respectively. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, tribal members propose a season from September 1, 2019, through February 29, 2020. The goose daily bag and possession limits would be 10 and 20, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate stamps by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and nontribal hunters of fewer than 1,000 ducks and 500 geese annually.

We propose to approve the Tulalip Tribe's request for 2019–20 special migratory bird hunting regulations.

(bb) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. The Tribe issues tribal hunters a harvest report card that will be shared with the State of Washington.

For the 2019–20 season, the Tribe requests a duck season starting October 1, 2019, and ending February 29, 2020. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The Tribe requests a coot season starting October 1, 2019, and ending February 15, 2020. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from October 1, 2019, to February 28, 2020, with a daily bag limit of 7 geese and a possession limit of 10. For brant, the Tribe proposes a season from November 1 to 10, 2019, with a daily bag and possession limit of two.

The Tribe proposes a mourning dove season between September 1 and December 31, 2019, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the tribal identification and tribal harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

We propose to approve the Tribe's 2019–20 special migratory bird hunting regulations.

(cc) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

The Wampanoag Tribe of Gay Head is a federally recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

We have yet to hear from the Wampanoag Tribe of Gay Head. The Tribe usually proposes a duck season of October 8 through February 16. The Tribe usually proposes a daily bag limit of eight birds, which could include no more than four hen mallards, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, two hooded mergansers, three wood ducks, one canvasback, two redheads, two pintail, and four of all other species not listed. The season for harlequin ducks is usually closed. The Tribe usually proposes a teal (green-winged and blue) season of October 8 through February 16. A daily bag limit of 10 teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe usually proposes a season between October 1 and February 16, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For Canada geese, the Tribe usually requests a season between September 3 and 15 and between October 22 and February 16, with a daily bag limit of eight Canada geese. For snow geese, the

tribe usually requests a season between September 3 and 13, and between November 19 and February 16, with a daily bag limit of 15 snow geese.

For woodcock, the Tribe usually proposes a season between October 8 and November 24, with a daily bag limit of three. For sora and Virginia rails, the Tribe usually requests a season of September 3 through November 3, with a daily bag limit of 5 sora and 10 Virginia rails. For snipe, the Tribe usually requests a season of September 3 through December 8, with a daily bag limit of eight.

Prior to 2012, the Tribe had 22 registered tribal hunters and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. The Tribe requires hunters to register with the Harvest Information Program.

We propose to approve the Tribe's 2019–20 special migratory bird hunting regulations, upon receipt of their proposal.

(dd) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Ojibwe is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2019–20 migratory bird hunting season, the White Earth Band of Ojibwe requests a duck season to start September 7 and end December 15, 2019. For ducks, they request a daily bag limit of 10, including no more than 2 hen mallards, 2 pintail, and 2 canvasback. For mergansers, the Tribe proposes the season to start September 7 and end December 15, 2019. The merganser daily bag limit would be five, with no more than two hooded mergansers. For geese, the Tribe proposes an early season from September 1 through 20, 2019, and a late season from September 21 through December 15, 2019. The early season daily bag limit is 10 geese, and the late season daily bag limit is 5 geese.

For coots, the Tribe usually proposes a September 1 through November 30, 2019, season with daily bag limits of 20 coots. For snipe, woodcock, rail, and mourning dove, the Tribe usually proposes a September 1 through November 30, 2019, season with daily bag limits of 10, 10, 25, and 25, respectively. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time conservation officers to enforce migratory bird regulations.

We propose to approve the Tribe's 2019–20 special migratory bird hunting regulations.

(ee) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority.

The hunting zone for waterfowl is restricted and is described as: The length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2019–20 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2019–20 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 19, 2019, and a closing date of January 26, 2020. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, two pintail, three scaup, seven mallards (including no more than two hen mallards), and two canvasback. The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate.

For geese, the Tribe proposes a season from October 19, 2019, through January 26, 2020. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would start September 1 and end September 15, 2019, in Wildlife Management Unit 10 and all areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal.

A number of special regulations apply to tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We plan to approve the White Mountain Apache Tribe's requested 2019–20 special migratory bird hunting regulations.

Public Comments

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgating final migratory game bird hunting regulations, we will consider all comments we receive. These comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird

Management, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in the preamble of a final rule.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the June 14 and September 21 proposed rules; for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see our June 14, 2018, proposed rule (83 FR 27836):

- National Environmental Policy Act Consideration;
- Endangered Species Act Consideration;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act of 1995;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and 13771.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2019–20 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: June 27, 2019.

Karen Budd-Falen,

Deputy Solicitor for Parks and Wildlife, Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–14319 Filed 7–5–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 84, No. 130
Monday, July 8, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 2, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 7, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: ARS Animal Health National Program Assessment Survey Form.

OMB Control Number: 0518–0042.

Summary of Collection: The Agricultural Research Service (ARS) covers the span of nutrition, food safety and quality, animal and plant production and protection, and natural resources and sustainable agricultural systems and it organized into seventeen National Programs addressing specific areas of this research. Research in the Agency is conducted through coordinated National Programs on a five-year cycle. The cycle ensures that ARS research meets OMB's Research and Development Investment Criteria and other external requirements, including the Research Title of the Farm Bill, and the Government Performance and Results Act of 1993 (GPRA). These National Programs serve to bring coordination, communication, and empowerment to approximately 690 research projects carried out by ARS and focus on the relevance, impact, and quality of ARS research. The requested voluntary electronic evaluation survey will give the beneficiaries of ARS research the opportunity to provide input on the impact of several ARS National Programs.

Need and Use of the Information: The purpose of the survey is to assess the impact of the research in the current National Program cycle and ensure relevance for the next cycle. Failure to collect input from our customers on the impact of our research program would significantly inhibit the relevance and credibility of the research conducted at ARS.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 600.

Frequency of Responses: Reporting: Other (5 years).

Total Burden Hours: 104.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–14456 Filed 7–5–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Malheur National Forest, Blue Mountain and Prairie City Ranger Districts and Wallowa-Whitman National Forest, Whitman Ranger District, Oregon; Austin Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of watershed and fisheries restoration, upland restoration activities, unique habitat restoration, hazardous fuels buffer treatments, prescribed burning and unplanned ignitions, road activities, and recreation system changes in the Austin planning area. The Forest Service identified the potential need for a project-specific Forest Plan amendment. This notice identifies the Planning Rule provisions likely to be directly related to the plan amendments.

DATES: Comments concerning the scope of the analysis must be received by August 7, 2019. The draft EIS is expected in the spring of 2020 and the final EIS is expected in the fall of 2020.

ADDRESSES: Send written comments to Robert Foxworth, District Ranger, Blue Mountain Ranger District, c/o Kate Cueno, P.O. Box 909, John Day, OR 97845. Comments may also be sent via email to *comments-pacificnorthwest-malheur-bluemountain@fs.fed.us,* or via facsimile to 541–575–3319.

FOR FURTHER INFORMATION CONTACT: Kate Cueno, National Environmental Policy Act Planner, Blue Mountain Ranger District, 431 Patterson Bridge Road, P.O. Box 909, John Day, OR 97845. Phone: 541–575–3031. Email: *klcueno@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Austin planning area encompasses approximately 78,200 acres in the the Bridge Creek-Middle Fork John Day watershed and the headwaters of the Middle Fork John Day River. The legal description for the planning area includes Townships 10 through 13 South, Ranges 35, 35 ½, and 36 East, Willamette Meridian, Grant County, Oregon. The full scoping package is available on the Malheur National Forest website: *https://www.fs.usda.gov/project/?project=53678.*

Purpose and Need for Action

The purpose and need for the Austin Project was developed by comparing management objectives and desired conditions in the Malheur Forest Plan to the existing conditions in the Austin Project planning area related to forest and watershed resiliency and biophysical processes and function. Where the Forest Plan information was not explicit, best available science and local research were used in a collaborative setting with stakeholders. The purpose and need is to: (1) Promote watershed health and resiliency, including improved water quality and flow characteristics, riparian vegetation communities, and aquatic habitats to maintain healthy ecological function and process; (2) Maintain and improve diverse forest composition and stocking levels to promote landscape resiliency within a complex disturbance regime of wildfire, drought, insects, and diseases; (3) Improve wildlife habitat, including critical wildlife habitat types, big game security areas, and old forest habitat; (4) Promote forest conditions that allow for the reintroduction of fire upon the landscape where naturally occurring fire has been excluded. Create conditions conducive to firefighter and public safety to improve the ability to protect the public and private land interface, and natural resource values; (5) Move toward a safe and sustainable minimum road system that is environmentally and economically sustainable, including consideration of the interaction of the road network and the stream network; and (6) Contribute to the region's social and economic vitality by promoting multiple uses in the Austin planning area, such as providing a variety of wood products, improving conditions of grazing allotments, enhancing recreational opportunities, and preserving local cultural history.

Proposed Action

The proposed action to address the purpose and need includes:

(1) Watershed and fisheries restoration (approximately 3,710 acres) to promote watershed health and resiliency. Activity types include thinning along perennial and seasonally flowing streams with or without anadromous fish habitat, tipping and felling trees directly into streams, and removing encroaching conifers from 30 riparian meadow areas.

(2) Upland restoration activites (approximately 35,720 acres) to maintain and improve diverse forest composition and stocking to promote landscape resiliency. Activities include commercial thinning (dry forest ponderosa pine, dry forest mixed conifer, and moist forest restoration), biomass treatment, and non-commercial thinning.

(3) Unique habitat restoration (approximately 840 acres) to improve critical wildlife habitat. Activities include aspen, mountain mahogany, and upland meadow restoration which would include tipping, felling, jackstrawing, hinging, and/or removing conifers that are encroaching into these habitat types.

(4) Hazardous fuels buffer treatments (approximately 3,240 acres) to promote forest conditions that allow for the reintroduction of fire on the landscape and create conditions conducive to firefighter and public safety. Activities include hazardous fuels buffer treatments (commercial harvest, post and pole or firewood sales, non-commercial thinning, piling, mastication, chipping, pile burning, underburning, jackpot burning, and biochar) along the boundaries of public and private lands, US Highway 26, and Oregon Highway 7.

(5) Prescribed burning and unplanned ignitions (approximately 76,700 acres) to allow for the reintroduction of fire on the landscape and create conditions conducive to firefighter and public safety. Approximately 790 acres of prescribed burning would occur outside the Austin planning area, including 110 acres on the Wallowa-Whitman National Forest, in order to incorporate roads and natural barriers for containment to reduce resource damange and increase firefighter safety. Treated stands would see a combination of burning piled material and underburning. Stands not mechanically treated would be managed primarily with the use of prescribed burning. As conditions and stand characteristics allow, unplanned ignitions within the planning area would be used to meet the objectives of prescribed burning.

(6) Road activities and road system changes to facilitate restoration activities, improve road conditions, and promote watershed health. Road maintenance and road construction for haul would occur on open and closed National Forest System roads to provide safe access and adequate drainage; some state highways may also be used. Temporary roads (approximately 43 miles) would be constructed to access some timber harvest units, which would be rehabilitated following use. The following road system changes are proposed: Closing 57 miles of currently open road, confirming the previous administrative closure of 31 miles of road, returning 11 miles of existing roadbed to the system as closed roads, opening 6.5 miles of road, relocating 1.2 miles of road out of a stream floodplain, decommissioning 13 miles of road (and providing alternate route access by opening roads as already described and with 0.3 miles of new road construction), and converting 1.2 miles of open road to trail. Disposal sites for excess material from road work and expansion of two rock pits are also proposed.

(7) Recreation system changes to enhance recreational opportunties and interpret local history. Activities include recreation site and trail developments, intepretive sign installation, and Dixie Campground hazard fuels reduction.

Preliminary wildlife connectivity corridors and security areas have been identified between late and old structure stands to allow for movement of old-growth dependent species and provide security for big game.

The Austin Project will also include a variety of project design criteria that serve to mitigate impacts of activities to forest resources, including: Wildlife, soils, watershed condition, aquatic species, riparian habitat conservation areas, heritage resources, visuals, rangeland, botanical resources, and invasive plants. The proposed action may also amend plan components in the Malheur Forest Plan, as amended: Dedicated old growth unit changes, reduce satisfactory and/or total cover, removal of trees greater than or equal to 21 inches diameter at breast height, harvest within late and old structure stands, and not maintaining connectivity between all late and old structure and old growth stands.

When proposing a Forest Plan amendment, the 2012 planning rule (36 CFR 219), as amended, requires the responsible official to provide in the initial notice ''which substantive requirements of 36 CFR 219.8 through 219.11 are likely to be directly related to an amendment'' (36 CFR 219.13(b)(2)). The following substantive requirements of the 36 CFR 219

planning regulations would likely be directly related to the proposed amendment:

§ 219.8(a)(1)(ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area;

§ 219.8(a)(1)(iii) Conditions in the broader landscape that may influence the sustainability of resources and ecosystems within the plan area;

§ 219.8(a)(1)(iv) [. . .] the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change;

§ 219.8(a)(1)(v) [. . .] opportunities to restore fire adapted ecosystems;

§ 219.8(a)(1)(vi) Opportunities for landscape scale restoration;

§ 219.9(a)(1) Ecosystem integrity. [. . .maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity];

§ 219.9(a)(2) Ecosystem diversity. [. . . maintain or restore the diversity of ecosystems and habitat types throughout the plan area];

§ 219.9(a)(2)(i) Key characteristics associated with terrestrial and aquatic ecosystem types;

§ 219.10(a)(1) [. . . to provide for ecosystem services and multiple uses in the plan area the responsible official shall consider: Aesthetic values, habitat and habitat connectivity, timber, vegetation, viewsheds, and other relevant resources and uses];

§ 219.10(a)(5) Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments);

§ 219.10(a)(7) Reasonably foreseeable risks to ecological, social, and economic sustainability.

§ 219.10(a)(8) [. . .] the ability of the terrestrial and aquatic ecosystems on the plan area to adapt to change (§ 219.8).

If the proposed project-specific amendments are determined to be directly related to the substantive rule requirements, the responsible official must apply those requirements within the scope and scale of the amendment (36 CFR 219.13(b)(5) and (6)).

Responsible Official

The Forest Supervisor of the Malheur National Forest is the Responsible Official.

Nature of Decision To Be Made

Based on the purpose and need, the Responsible Official will review the proposed action, the other alternatives, the environmental consequences, and public comments in order to make the decision: (1) Whether to implement the proposed activities; and if so, how much and at what specific locations; (2) What, if any, specific project monitoring requirements are needed to assure project design criteria and mitigation measures are implemented and effective, and to evaluate the success of the project objectives.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The interdisciplinary team will continue to seek information and comments from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action. There is a collaborative group in the area that the interdisciplinary team will interact with during the analysis process.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, anonymous comments will not afford the Agency with the ability to provide the respondent with subsequent environmental documents, nor will those who submit anonymous comments have standing to object to the subsequent decision under 36 CFR 218.

Dated: May 16, 2019.

Frank R. Beum,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–14388 Filed 7–5–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request Approval To Renew an Information Collection and Record Keeping Requirement

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval to renew an information collection and record keeping requirement for the Veterinary Medical Loan Repayment Program (VMLRP).

DATES: Written comments on this notice must be received by September 6, 2019, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by Veterinary Medicine Loan Repayment Program FRN, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Include Veterinary Medicine Loan Repayment Program FRN in the subject line of the message. Instructions: All comments received must include the agency name and reference Veterinary Medicine Loan Repayment Program FRN. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Martin, Records Officer; Email: *rmartin@usda.gov.* Phone: 202–445–5388.

SUPPLEMENTARY INFORMATION:

Title: Veterinary Medical Loan Repayment Program (VMLRP).

OMB Number: 0524–0050.

Type of Request: Intent to request approval to renew an information collection and record keeping requirement for three years.

Abstract: In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997. This law established a new Veterinary Medicine Loan Repayment Program (VMLRP) (7 U.S.C. 3151a) authorizing the Secretary

of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. The purpose of the program is to assure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

In 2016, the VMLRP Program Office proposed and received approval for a record keeping requirement for VMLRP participants and to collect additional information from current participants, their employers and past participants. The records maintained and the information collected allow for better oversight and assessment of the program. Additionally, to streamline OMB approval processes all previously approved VMLRP information collections (OMB Control Number 0524–0046 and 0524–0047) were combined into a single package along with the new information proposed. Each new requirement is described in detail below.

In 2019, the VMLRP Program is requesting renewal of this record keeping and information collection requirement. All documents will remain unchanged.

Total Estimate of Burden: The estimated annual reporting burden for all VMLRP collection is as follows:

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Applicants:				
Veterinary Medicine Loan				
Repayment Program				
Application OMB0524–0047	602	1	1350	1350
Applicants subtotal				1350
State Animal Health Officials:				
Veterinary Medicine Loan Repayment Program Shortage Situation Nomination OMB0524–0046	60	4	2	480
State Animal Health Officials subtotal				480
Current Participants:.				
Service Log	150	260	.25	9750
Feedback Survey	50	1	.33	16.5
Close-out Report	50	1	.33	16.5
Current Participants subtotal				9783
Employers:				
Employer Feedback	30	1	.25	7.5
Employer subtotal				7.5
Past Participants:				
Post-Award Termination Survey	150	1	.25	37.5
Past Participants subtotal				37.5
Grand Total				11,658

Comments: Comments are invited on: (a) Whether the proposed record keeping requirement and collection of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collecting the information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this 27th day of June, 2019.

Steve Censky,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2019–14387 Filed 7–5–19; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Solicitation of Applications for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2019

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the timeframe to submit pre-applications for Section 514 Farm Labor Housing (FLH) loans and Section 516 FLH grants for the construction of new off-farm FLH units and related facilities for domestic farm laborers and for the purchase and substantial rehabilitation of non-FLH property. The intended purpose of the loans and grants is to increase the number of available housing units for domestic farm laborers. This Notice describes the method used to distribute funds, the application process, and submission requirements.

The amount of funding available can be found at the following link: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Expenses incurred in developing applications will be at the applicant's risk.

DATES: The agency deadline for receipt of all applications in response to this Notice is 5 p.m., local time to the appropriate Rural Development State Office by August 30, 2019. Rural Development will not consider any application that is received after the deadline unless the date and time are extended by another Notice published in the **Federal Register**. Applicants mailing applications must provide sufficient time to permit delivery on or

before the deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to submit an application in response to this Notice must contact the Rural Development State Office serving the State of the proposed off-farm FLH project in order to receive further information and copies of the application package. You may find the addresses and contact information for each State Office at, *http://www.rd.usda.gov/contact-us/state-offices.* Rural Development will date, and time stamp incoming applications to evidence timely receipt, and will provide the applicant with a written acknowledgment of receipt upon request.

FOR FURTHER INFORMATION CONTACT: Mirna Reyes-Bible, Senior Finance and Loan Analyst, Preservation and Direct Loan Division, STOP 0781 (Room 1263–S), USDA Rural Development, 1400 Independence Avenue SW, Washington, DC 20250–0781, telephone: (202) 720–1753 (this is not a toll-free number), or via email: *mirna.reyesbible@usda.gov.*

SUPPLEMENTARY INFORMATION:

Priority Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation. Please note that this Notice of Solicitation Applications (NOSA) does not award points for these strategies. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To encourage investments in rural properties, the Agency also will award points to projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the State and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service. See *https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions* for more information.

To focus investments in areas where the need for increased prosperity is greatest, the Agency will set aside 10 percent of the funds available through this fiscal year's NOSA for applications that will serve persistent poverty counties. Persistent poverty counties are areas where at least 20 percent of the population is living in poverty over the last 30 years (measured by the 1980, 1990, 2000 and 2010 decennial censuses and 2007–2011 American Community Survey 5-year estimates) according to American Community Survey census tract data. Information on which counties are considered persistent poverty counties can be found through the United States Department of Agriculture's (USDA) Economic Research Service (ERS) (*http://ers.usda.gov/*). ERS is the main source of economic information and research for USDA and a principal agency of the U.S. Federal Statistical System located in Washington, DC. Set-aside funds will be awarded in the order of receipt of complete pre-applications. Once the set-aside funds are exhausted, any further set-aside applications will be evaluated and ranked with the other applications submitted in response to this Notice. If, by September 6, 2019, the Agency does not receive enough eligible applications to fully utilize the 10 percent set aside in the service of these areas, the Agency will award any unused set aside funds to other eligible applicants.

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Notice of Solicitation Applications for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year (FY) 2019.

Announcement Type: Solicitation of pre-applications from qualified applicants for FY 2019.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.405 and 10.427.

A. Federal Award Description

Pre-applications will only be accepted through the date and time listed in this Notice. All awards are subject to availability of funding. The maximum award per selected project may not exceed $3 million (total loan and grant).

A State will not receive more than 30 percent of FLH funding appropriated for FY 2019, unless there are remaining Section 514 and Section 516 funds after all eligible applications nationwide have been funded. In this case, funds will be awarded to the next highest-ranking eligible applications among all of the remaining unfunded applications submitted to the National Office by the State Offices. The National Office will allocate the awarded funds to the States for obligation, and the allocation of these funds may result in a State or States exceeding the 30 percent limitation.

Section 516 off-farm FLH grants may not exceed 90 percent of the total development cost (TDC) of the housing as defined in 7 CFR 3560.11. Section 514 off-farm labor loans may not exceed the limits set forth in 7 CFR 3560.562(b).

If leveraged funds are going to be used and are in the form of tax credits, the applicant must include in the pre-application written evidence that a tax credit application has been submitted and accepted by the Housing Finance Agency (HFA). All applications that receive any leveraged funds must have firm commitments in place within 18 months of the issuance of a ''Notice of Pre-Application Review Action,'' Handbook Letter 106 (3560). Applicants without written evidence that a tax credit application has been submitted and accepted by a HFA must certify in writing they will apply for tax credits to a HFA and obtain a firm commitment within 18 months of the issuance of a ''Notice of Pre-Application Review Action.'' Those applicants that do not obtain a firm commitment for tax credits from a HFA within 18 months of the issuance of a ''Notice of Pre-Application Review Action'' will be deemed to have an incomplete application and will be notified in writing that funds will be de-obligated.

Rental Assistance (RA) and operating assistance will be available for new construction in FY 2019. Operating assistance is explained at 7 CFR 3560.574 and may be used in lieu of tenant-specific RA in off-farm FLH projects that serve migrant farm workers as defined in 7 CFR 3560.11, that are financed under Section 514 or Section 516(h) of the Housing Act of 1949, as amended (42 U.S.C. 1484 and 1486(h) respectively), and otherwise meet the requirements of 7 CFR 3560.574.

In order to maximize the use of the limited supply of FLH funds, the Agency may contact eligible NOSA responses selected for an award in point

score order starting with the higher scores, with proposals to modify the transaction's proportions of grant and loan funds. In addition, if funds remain after the highest scoring eligible NOSA responses are selected for awards, we may contact those eligible responses not selected for awards, in point score order starting with the highest scores, to ascertain whether those respondents will accept the remaining funds.

B. Eligibility Information

1. Eligibility

Housing Eligibility—housing that is constructed with FLH loans and/or grants must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, off-farm FLH must be managed in accordance with 7 CFR part 3560. In addition, off-farm FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless at which farm they work. Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)) defines domestic farm laborers to include any person regardless of the person's source of employment, who receives a substantial portion of his/her income from the primary production of agricultural or aqua cultural commodities in the unprocessed or processed stage, and also includes the person's family.

Tenant Eligibility—tenant eligibility is limited to persons who meet the definition of a ''disabled domestic farm laborer,'' or a ''domestic farm laborer,'' or ''retired domestic farm laborer,'' as defined in Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)).

Section 514(f)(3)(A) of the Housing Act of 1949 (42 U.S.C. 1484(f)(3)(A)) has been amended to extend FLH tenant eligibility to agricultural workers legally admitted to the United States and authorized to work in agriculture. It is important to note, that persons admitted legally for agricultural work remain ineligible for Rental Assistance (RA) as set forth in 7 CFR 3560.254(c). In addition, under no circumstance may any currently eligible FLH tenants be displaced from their homes as a result of this statutory change.

Applicant Eligibility—

(a) To be eligible to receive a Section 516 grant for off-farm FLH, the applicant must meet the requirements of 7 CFR 3560.555 and be a broad-based non-profit organization, including community and Faith-Based organizations, a non-profit organization of farm workers, a Federally recognized Indian tribe, an agency or political subdivision of a State or local Government, or a public agency (such as a housing authority). The applicant must be able to contribute at least one-tenth of the TDC. An off-farm labor housing loan (514) financed by RHS may be used to meet this requirement. Limited partnerships in which a general partner is a non-profit entity are eligible for Section 514 loans but are not eligible for Section 516 grants.

(b) To be eligible to receive a Section 514 loan for off-farm FLH, the applicant must meet the requirements of 7 CFR 3560.555 and be a broad-based non-profit organization, including community and Faith-Based organizations, a non-profit organization of farm workers, a Federally recognized Indian tribe, an agency or political subdivision of a State or local Government, a public agency (such as a housing authority), or a limited partnership which has a non-profit entity as its general partner, and

(i) Be unable to provide the necessary housing from its own resources;

(ii) Evidence that the applicant is unable to obtain credit from other sources. Letters from credit institutions which normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided. (Note: not required from State or local public agencies or Indian tribes.)

(iii) Broad-based non-profit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

2. *Cost Sharing or Matching*—Section 516 grants for off-farm FLH may not exceed 90 percent of the TDC as provided in 7 CFR 3560.562(c)(1).

3. *Other Requirements*—the following requirements apply to loans and grants made in response to this Notice:

(a) 7 CFR part 1901, subpart E, regarding equal opportunity requirements;

(b) For grants only, 2 CFR parts 200 and 400, which establishes the uniform administrative and audit requirements for grants and cooperative agreements to State and local Governments and to non-profit organizations;

(c) 7 CFR part 1901, subpart F, regarding historical and archaeological properties;

(d) 7 CFR 1970.11, Environmental review process. *Please note, the Agency must conclude the environmental review process before a FLH award is obligated.* It is incumbent on an applicant to work closely and to coordinate with the corresponding State Office during the environmental review process.

(e) 7 CFR part 3560, subpart L, regarding the loan and grant authorities of the off-farm FLH program;

(f) 7 CFR part 1924, subpart A, regarding planning and performing construction and other development;

(g) 7 CFR part 1924, subpart C, regarding the planning and performing of site development work;

(h) For construction financed with a Section 516 grant, the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)–5) and implementing regulations published at 29 CFR parts 1, 3, and 5;

(i) A check for $24 from the applicant made out to the United States Department of Agriculture. This check will be used to pay for credit reports obtained by the Agency;

(j) Borrowers and grantees must take reasonable steps to ensure that tenants receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to provide this assistance to tenants who can effectively participate in or benefit from Federally-assisted programs or activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and Title VI regulations against national origin discrimination

(k) All other requirements contained in 7 CFR part 3560, regarding the Sections 514/516 off-farm FLH programs; and

(l) Please note that grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain registration in the Central Contractor Registration (CCR) prior to submitting a pre-application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in the CCR database at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

C. Application and Submission Information

1. Pre-Application Submission

The application process will be in two phases: The initial pre-application (or

proposal) and the submission of a final application. Only those pre-applications or proposals that are selected for further processing will be invited to submit final applications. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded pre-application will be selected for further processing. All pre-applications for Sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this Notice. Incomplete pre-applications will not be reviewed and will be returned to the applicant. No pre-application will be accepted after the deadline unless date and time are extended by another Notice published in the **Federal Register**.

Pre-applications can be submitted either electronically using the FLH Pre-Application form found at: *http://www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants* or in hard copy to the appropriate Rural Development Office where the project will be located. Follow the link to find the appropriate Rural Development State Office address for requesting and submitting a pre-application at: *http://www.rurdev.usda.gov/Stateoffice Addresses.html.* Applicants are strongly encouraged; but not required, to submit the pre-application electronically. The electronic form contains a button labeled ''Send Form.'' By clicking on the button, the applicant will see an email message window with an attachment that includes the electronic form the applicant filled out as a data file with a .pdf extension. In addition, an auto-reply acknowledgement will be sent to the applicant when the electronic Loan Proposal form is received by the Agency unless the sender has software that will block the receipt of the auto-reply email. The State Office will record pre-applications received electronically by the actual date and time when all attachments are received at the State Office.

Submission of the electronic Section 514 Loan Proposal form *does not* constitute submission of the entire proposal package which requires additional forms and supporting documentation as listed within this Notice. You may use one of the following options for submitting the entire proposal package comprising of all required forms and documents. On the Loan Proposal form you can indicate the option you will be using to submit each required form and document.

(a) Electronic Media Option. Submit all forms and documents as read-only Adobe Acrobat files on electronic media such as CDs, DVDs or USB drives. For each electronic device submitted, the applicant should include a Table of Contents of all documents and forms on that device. The electronic media should be submitted to the Rural Development State Office listed in this Notice where the property is located. Any forms and documents that are not sent electronically, including the check for credit reports, must be mailed to the Rural Development State Office.

(b) E-Mail Option. On the Loan Proposal form you will be asked for a submission email address. This email address will be used to establish a folder on the USDA server with your unique email address. Once the Loan Proposal form is processed, you will receive an additional email notifying you of the email address that you can use to email your forms and documents. *Please Note:* all forms and documents must be emailed from the same submission email address. This will ensure that all forms and documents you send will be stored in the folder assigned to that email address. Any forms and documents that are not sent via the email option must be submitted on an electronic media or in hard copy to the Rural Development State Office.

(c) Hard Copy Submission to the Rural Development State Office. If you are unable to send the proposal package electronically using either of the options listed above, you may send a hard copy of all forms and documents to the Rural Development State Office where the property is located. Hard copy pre-applications received on or before the deadline will receive the close of business time of the day received as the receipt time. Assistance for filing electronic and hard copy pre-applications can be obtained from any Rural Development State Office.

For electronic submissions, there is a time delay between the time it is sent and the time it is received depending on network traffic. As a result, last-minute submissions sent before the deadline date and time could be received after the deadline date and time because of the increased network traffic. *Applicants are reminded that all submissions received after the deadline date and time will be rejected, regardless of when they were sent.*

If a pre-application is accepted for further processing, the applicant must submit a complete, final application, acceptable to Rural Development prior to the obligation of Rural Development funds. If the pre-application is not accepted for further processing the applicant will be notified of appeal rights under 7 CFR part 11.

2. Pre-Application Requirements

(a) The pre-application must contain the following:

(1) A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

i. Applicant's name.

ii. Applicant's Taxpayer Identification Number.

iii. Applicant's address.

iv. Applicant's telephone number.

v. Name of applicant's contact person, telephone number, and address.

vi. Amount of loan and/or grant requested.

vii. For grants of Federal financial assistance (including loans and grants, cooperative agreements, etc.), the applicant's DUNS number and registration in the CCR database in accordance with 2 CFR part 25. As required by OMB, all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at (866) 705–5711 or via the internet at: *http://www.dnb.com/.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *www.grants.gov.* Similarly, applicants may register for the CCR at: *https://www.uscontractorregistration.com/* or by calling (877) 252–2700.

(2) Awards made under this Notice are subject to the provisions contained in the Consolidated Appropriations Act, 2019 (Pub. L. 116–6) sections 745 and 746 regarding felony convictions and corporate Federal tax delinquencies. To comply with these provisions, applicants that are or propose to be corporations will submit form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' as part of their pre-application. Form AD–3030 can be found here: *http://www.ocio.usda.gov/document/ad3030.*

(3) A narrative verifying the applicant's ability to meet the eligibility requirements stated earlier in this Notice. If an applicant is selected for further processing, Rural Development will require additional documentation as set forth in a Conditional Commitment in order to verify the entity has the legal and financial capability to carry out the obligation of the loan.

(4) Standard Form 424, ''Application for Federal Assistance,'' can be obtained at: *http://www.grants.gov* or from any Rural Development State Office listed in Section VII of this Notice.

(5) For loan pre-applications, current (within 6 months of pre-application date) financial statements with the following paragraph certified by the applicant's designated and legally authorized signer:

''I/we certify the above is a true and accurate reflection of our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.''

(6) For loan pre-applications, a check for $24 from applicants made out to the United States Department of Agriculture. This will be used to pay for credit reports obtained by Rural Development.

(7) Evidence that the applicant is unable to obtain credit from other sources. Evidence may include but is not limited to a denial from a credit institution which normally provide real estate loans in the area. (Note: not required from State or local public agencies or Indian tribes.)

(8) If an FLH grant is desired, a statement concerning the need for an FLH grant. The statement should include preliminary estimates of the rents required with and without a grant.

(9) A statement of the applicant's experience in operating labor housing or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience (*i.e.,* obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

(10) A brief statement explaining the applicant's proposed method of operation and management (*i.e.,* on-site manager, contract for management services, etc.). As stated earlier in this Notice, the housing must be managed in accordance with the program's management regulation, 7 CFR part 3560.

(11) Provide your entity's projected Return on Investment (ROI) for the requested funds to demonstrate the effectiveness and efficiency of your proposal. Please include the methodology and assumptions you used in the ROI calculation. Also include a detailed examination of outputs and outcomes.

(12) Applicants must also provide:

(i) A copy of, or an accurate citation to, the special provisions of State or Tribal law under which they are organized, a copy of the applicant's charter, Articles of Incorporation, and by-laws;

(ii) The names, occupations, and addresses of the applicant's members, directors, and officers; and

(iii) If a member or subsidiary of another organization, the organization's name, address, and nature of business.

(13) A preliminary market survey or market study to identify the supply and demand for farm labor housing in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. Documentation must be provided to justify a need within the intended market area for the housing of domestic farm laborers. The documentation must consider disabled and retired farm workers. The preliminary survey should address or include the following items:

(i) The annual income level of farmworker families in the area and the probable income of the farm workers who will likely occupy the proposed housing;

(ii) A realistic estimate of the number of farm workers who remain in the area where they harvest and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants *(i.e.,* single individuals as opposed to families);

(iii) General information concerning the type of labor-intensive crops grown in the area and prospects for continued demand for farm laborers;

(iv) The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (*i.e.,* will they rent to large families, do they require annual leases, etc.);

(v) The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers;

(vi) A description of the units proposed, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility, estimated development timeline, estimated TDC, and applicant contribution; and

(vii) The applicant must also identify all other sources of funds, including the dollar amount, source, and commitment status. (Note: a Section 516 grant may not exceed 90 percent of the TDC of the housing.)

(14) The applicant must submit a checklist, certification, and signed affidavit by the project architect or engineer, as applicable, for any energy programs the applicant intends to participate in.

(15) The following forms are required:

(i) A prepared HUD Form 935.2A, ''Affirmative Fair Housing Marketing Plan (AFHM) Multi-Family Housing,'' in accordance with 7 CFR 1901.203(c). The plan will reflect that occupancy is open to all qualified ''domestic farm laborers,'' regardless of which farming operation they work and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units. The form can be found at: *http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.PDF.*

(ii) A proposed operating budget utilizing Form RD 3560–7, ''*Multiple Family Housing Project Budget/Utility Allowance,*'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-7.PDF.*

(iii) An estimate of development cost utilizing Form RD 1924–13, ''*Estimate and Certificate of Actual Cost,*'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF.*

(iv) Form RD 3560–30, ''*Certification of no Identity of Interest (IOI),*'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-30.PDF* and Form RD 3560–31, ''*Identity of Interest Disclosure/Qualification Certification,*'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-31.PDF.*

(v) Form HUD 2530, ''Previous Participation Certification,'' can be found at: *http://portal.hud.gov/hudportal/documents/huddoc?id=2530.pdf.*

(vi) If requesting RA or Operating Assistance, Form RD 3560–25, ''*Initial Request for Rental Assistance or Operating Assistance,*'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-25.PDF.*

(vii) Form RD 400–4, ''*Assurance Agreement,*'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.*

(viii) Evidence of compliance with Executive Order 12372. The applicant must send a copy of Form SF–424,

''Application for Federal Assistance,'' to the applicant's State clearinghouse for intergovernmental review. If the applicant is located in a State that does not have a clearinghouse, the applicant is not required to submit the form. Applications from Federally recognized Indian tribes are not subject to this requirement.

(ix) Evidence of site control, such as an option contract or sales contract. In addition, a map and description of the proposed site, including the availability of water, sewer, and utilities and the proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

(x) Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials. The housing must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards.

(xi) A supportive services plan, which describes services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farm workers and their families. Letters of intent from service providers are acceptable documentation at the pre-application stage. RA may not fund a direct service provision.

(xii) A Sources and Uses Statement which shows all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the Sources and Uses Statement.

(xiii) A separate one-page information sheet listing each of the ''Pre-Application Scoring Criteria,'' contained in this Notice, followed by a reference to the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria. Applicants are encouraged, but not required, to include a checklist of all of the pre-application requirements and to have their pre-application indexed and tabbed to facilitate the review process.

(xvi) Evidence of compliance with the requirements of the applicable State Housing Preservation Office (SHPO), and/or Tribal Historic Preservation Officer (THPO). A letter from the SHPO and/or THPO where the off-farm FLH project is located, signed by their designee will serve as evidence of compliance.

(xv) Environmental information in accordance with the requirements in 7 CFR 1970.

D. Pre-Application Review Information

1. *Selection Criteria.* Section 514 FLH loan funds and Section 516 FLH grant funds will be distributed to States based on a national competition, as follows:

(a) Rural Development State Office will accept, review, and score pre-applications in accordance with this Notice.

(1) Points will be allocated for applications that leverage other funds based on the leverage funds percentage of RD's total investment. This is calculated as follows:

Rural Development Leverage funds equals the sum of all permanent third-party project investments plus Rural Development's allowed value of donated land. The value of the donated land will be calculated in accordance with Rural Development's Handbook HB–1–3560. The amount of permanent third-party project investments is limited to third-party funds from equity, grants, loans, and deferred developer fees. To obtain the percentage from which the leverage points are derived, this leverage fund amount is divided by Rural Development's investment, which equals the total amount of approved Section 516 grants and/or Section 514 loans. For example:

$$\frac{\text{\$15 million third-party funds + \$500,000 Rural Development value of donated land}}{\text{\$3 million Section 514 loan}} = \textbf{leverage percentage of 516.67 percent}$$

The score points for leverage in this section will be calculated by multiplying the leverage percentage by 10. Using the above percentage, this would be 516.67 percent (or 5.1667) × 10, which equates to 51.67 score points for leverage.

A score point for leverage of more than zero but less than one will be rounded to one (1) point. A score point for leverage of zero or less will not receive any points. There is no maximum amount of score points for leverage. All score points for leverage will be rounded to two decimal places.

(2) The presence of operational cost savings, such as tax abatements, non-Rural Development tenant subsidies or donated services are calculated on a per-unit cost savings for the sum of the savings. Savings must be available for at least 5 years and documentation must be provided with the application demonstrating the availability of savings for 5 years. To calculate the savings, take the total amount of savings and divide it by the number of units in the project that will benefit from the savings to obtain the per-unit cost savings. For non-Rural Development tenant subsidy, if the value changes during the 5-year calculation, the applicant must use the lower of the non-Rural Development tenant subsidy to calculate per-unit cost savings. For example, a 10-unit property with 100 percent designated farm labor housing units receiving $20,000 per year non-Rural Development subsidy yields a cost savings of $100,000 ($20,000 × 5 years); resulting to a $10,000 per-unit cost savings ($100,000/10 units).

Use the following table to apply points:

Per-unit cost savings	Points
Above $15,000	50
$10,001–$15,000	35
$7,501–$10,000	20
$5,001–$7,500	15
$3,501–$5,000	10
$2,001–$3,500	5
$1,000–$2,000	2

The Agency will not be providing excess assistance to the project. This is determined by conducting a subsidy layering review at this stage, and then again at Stage 2 of the loan origination process. Paragraph 4.19 of the USDA Multi-Family Housing Loan Origination Handbook (HB–1–3560) provides details on the subsidy layering review process. A subsidy layering review will be required prior to funding.

(3) Ten (10) points will be awarded to projects in Opportunity Zones. An Opportunity Zone is an economically-

distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the State and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service. See *https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions* for more information.

(4) Points will be allocated for the presence of tenant services. Two (2) points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant. These services may include, but are not limited to, transportation related services, on-site English as a Second Language classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. RA may not be used to pay for these services.

(5) Points will be allocated for Energy initiatives (the aggregate points for all the Energy Initiative categories may not exceed 20 points).

Properties may receive points for energy initiatives in the categories of energy conservation, energy generation, water conservation and green property management. Depending on the scope of work, properties may earn ''energy initiative'' points in either one of two categories: (1) New Construction or (2) Purchase and Rehabilitation of an Existing Non-Farm Labor Housing Building. Projects will be eligible for one category of the two, but not both.

Energy programs including Council's Leadership in Energy and Environmental Design (LEED) for Homes, Green Communities, etc., will each have an initial checklist indicating prerequisites for participation in its energy program. The applicable energy program checklist will establish whether prerequisites for the energy program's participation will be met. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable, and the project has been enrolled in these programs if enrollment is applicable to that program. In addition, projects that apply for points under the energy generation category must include calculations of savings of energy. Compare property energy usage of three scenarios: (1) Property built to required code of State with no renewables, to (2) property as-designed with commitments to stated energy conservation programs without the use of renewables and (3) property as-designed with commitments to stated energy conservation programs and the use of proposed renewables. Use local average metrics for weather and utility costs and detail savings in kWh and dollars. Provide payback calculations. These calculations must be done by a licensed engineer or credentialed renewable energy provider. Include with application, the provider/engineer's credentials including qualifications, recommendations, and proof of previous work. The checklist, affidavit, calculations, and qualifications of engineer/energy provider must be submitted together with the loan application.

Enrollment in EPA Portfolio Manager Program. All projects awarded scoring points for energy initiatives must enroll the project in the EPA Portfolio Manager program to track post-construction energy consumption data. More information about this program may be found at: *http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.*

(i) Energy Conservation for New Construction or Purchase and Rehabilitation of an Existing Non-Farm Labor Housing Building. Projects may be eligible for scoring points when the pre-application includes a written certification by the applicant to participate and achieve certification in the following energy efficiency programs.

The points will be allocated as follows:

• Participation in the EPA's Energy Star for Homes V3 program. (2 points) *http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_bldr.*

OR

• Participation in the Green Communities program by the Enterprise Community Partners. (4 points) *http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities.*

OR

• Participation in one of the following two programs will be awarded points for certification.

Note: Each program has four levels of certification. State the level of certification that the applicant plans will achieve in their certification:

• LEED for Homes program by the United States Green Building Council (USGBC): *http://www.usgbc.org.*

—Certified Level (2 points), OR
—Silver Level (4 points), OR
—Gold Level (6 points), OR
—Platinum Level (8 points)

Applicant must state the level of certification that the applicant's plans will achieve in their certification in its pre-application.

OR

• Home Innovation's and The National Association of Home Builders (NAHB) ICC 700 National Green Building Standard TM: *http://www.nahb.org/.*

—Green-Bronze Level (2 points), OR
—Silver Level (4 points), OR
—Gold Level (6 points), OR
—Emerald Level (8 points)

Applicant must state the level of certification that the applicant's plans will achieve in their certification in its pre-application.

AND

• Participation in the Department of Energy's Zero Energy Ready program. (2 points) *http://www.energy.gov/eere/buildings/zero-energy-ready-home.*

AND

• Participation in local green/energy efficient building standards. Applicants who participate in a city, county or municipality program (2 points).

(ii) Energy Conservation for Rehabilitation. Pre-applications for the purchase and rehabilitation of non-program MFH and related facilities in rural areas may be eligible for scoring points when the pre-application includes a written certification by the applicant to participate in one of the following energy efficiency programs. Again, the certification must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable. Points will be award as follows:

• Participation in the Green Communities program by the Enterprise Community Partners (3 points) *http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities.* At least 30 percent of the points needed to qualify for the Green Communities program must be earned under the Energy Efficiency section of Green Communities.

AND

• Participation in local green/energy efficient building standards. Applicants who participate in a city, county or municipality program (2 points). The applicant should be aware of and look for additional requirements that are

sometimes embedded in the third-party program's rating and verification systems.

(iii) Energy Generation. Pre-applications for new construction or purchase and rehabilitation of non-program multi-family projects which participate in the above-mentioned programs and receive scoring points for installation of on-site renewable energy sources. Energy analysis of preliminary building plans using industry-recognized simulation software must document the projected total energy consumption of all of the building components and building site usage. Projects with an energy analysis of the preliminary or rehabilitation building plans that propose a 10 percent to 100 percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy) will be awarded points as follows:

- 0 to 9 percent commitment to energy generation—0 points
- 10 to 20 percent commitment to energy generation—1 point
- 21 to 40 percent commitment to energy generation—2 points
- 41 to 60 percent commitment to energy generation—3 points
- 61 to 80 percent commitment to energy generation—4 points
- 81–100 percent or more commitment to energy generation—5 points

Projects may participate in Power Purchase Agreements or Solar Leases to achieve their on-site renewable energy generation goals provided that the financial obligations of the lease/purchase agreements are clearly documented and included in the application, and qualifying ratios continue to be achieved.

An additional 1 point will be awarded for off-grid systems, or elements of systems, provided that at least 5 percent of on-site renewable system is off-grid. See *www.dsireusa.org* for State and local specific incentives and regulations of energy initiatives.

(iv) Water Conservation in Irrigation Measures. Projects may be awarded 1 point for the use of an engineered recycled water (gray water or storm water) for landscape irrigation covering 50 percent or more of the property's site landscaping needs.

(v) Property Management Credentials. Projects may be awarded 1 point if the designated property management company or individuals that will assume maintenance and operations responsibilities upon completion of construction work have a Credential for Green Property Management. Credentialing can be obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, The Institute for Real Estate Management, U.S. Green Building LEED for Operations and Maintenance, or another source with a certifiable credentialing program. Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application.

E. Federal Award Administration Information

1. Federal Award Notices

Applicants must submit their pre-applications by the due date specified in this Notice. Once the pre-applications have been scored and ranked by the State Office, the pre-applications must be reviewed and concurred with for funding by the National Office. The National Office will rank by score, highest to lowest, eligible pre-applications approved by State Offices. Based on available funding and the 30 percent limitation per State, the National Office will determine which pre-applications can be funded starting with the highest scoring pre-application. Thereafter, the National Office will notify the State Offices of pre-applications it concurred with for funding and further processing. Upon National Office notification, State Offices will notify applicants with pre-applications found eligible and selected for further processing. The selected applicants must submit a final application to their respective State Offices as soon as possible, but no later than 90 calendar days from the date of the selection letter (deadline). The State Office will deem an application not submitted on or before the deadline incomplete and a withdrawal by the applicant from consideration under this Notice. The applicant may re-submit its pre-application under a subsequent Notice.

Pre-applications will be notified if there are insufficient funds available for the proposal and such notification is not appealable.

Pre-applications found ineligible, State Offices will send notices of ineligibility that provide appeal rights under 7 CFR part 11, as appropriate.

The National Office will rank all pre-applications nationwide and distribute funds to States in rank order, within funding and RA limits. When proposals have an equal score and not all pre-applications can be funded, preference will be given first to *Indian tribes* as defined in § 3560.11, then *local non-profit organizations or public bodies whose principal purposes include low-income housing* that meet the conditions of § 3560.55(c), and the following conditions:

- Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Service code;
- Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;
- Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;
- Is not co-venturing with another entity; and
- The entity or its members will not be receiving any direct or indirect benefits pursuant to Low Income Housing Tax Credits.

If after all of the above evaluations are completed there are two or more pre-applications that have the same score, and all cannot be funded, a lottery will be used to break the tie. The lottery will consist of the names of each application with equal scores printed onto a same size piece of paper, which will then be placed into a receptacle that fully obstructs the view of the names. The Director of the Preservation and Direct Loan Division, in the presence of two witnesses, will draw a piece of paper from the receptacle. The name on piece of paper drawn will be the applicant to be funded.

If insufficient funds or RA remain for the next ranked proposal, that applicant will be given a chance to modify their pre-application to bring it within the remaining available funding. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted.

2. Administrative and National Policy

All FLH loans and grants are subject to the restrictive-use requirements contained in 7 CFR 3560.72(a) (2).

3. Reporting

Borrowers must maintain separate financial records for the operation and maintenance of the project and for tenant services. Tenant services will not be funded by Rural Development. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of tenant services, nor may tenant service funds be used to supplement the project operation and maintenance. Detailed financial reports regarding tenant services will not be required unless specifically requested by Rural Development, and then only to the extent necessary for Rural Development and the borrower to discuss the affordability (and competitiveness) of

the service provided to the tenant. The project audit, or verification of accounts on Form RD 3560–10, ''*Borrower Balance Sheet,*'' together with an accompanying Form RD 3560–7, ''*Multiple Family Housing Project Budget Utility Allowance,*'' must allocate revenue and expense between project operations and the service component.

F. Guidance to Agency Staff for Processing Section 514/516 Farm Labor Housing (FLH) New Construction Loan and Grant Requests

General Processing Guidelines

Submitted applications should be reviewed for completeness using the requirements listed in this NOSA. Complete applications received by the deadline listed in this NOSA will be reviewed and scored based upon the factors listed therein by Agency staff. States Offices that need assistance with the review or the processing of FLH pre-applications should contact Mirna Reyes-Bible of the Multi-Family Housing Preservation and Direct Loan Division's Farm Labor Housing Program at (202) 720–1753 or at *mirna.reyesbible@usda.gov*.

The following are tasks that will be completed by Agency staff:

• State Offices will conduct the site visit and conduct the environmental review, and civil rights impact analysis. States Offices should refer to the 7 CFR part 1970 Instructions for guidance on how to conduct environmental reviews. RD Instructions for 7 CFR part 1970 can be found at: *https://www.rd.usda.gov/publications/regulations-guidelines/instructions*.

• State Offices will conduct preliminary eligibility assessment on each application received. Based on the preliminary eligibility, feasibility review, and application scoring, State Offices fax or email a final list of their scored and ranked pre-applications and a copy of the preliminary market study submitted by the applicant to the National Office.

• The State Office will include in the National Office list every pre-application determined incomplete or ineligible along with the reason for that determination, and receive National Office concurrence, prior to notifying the applicant. Pre-applications will be notified by the State Office if there are insufficient funds available for the proposal and such notification is not appealable. The Agency will notify the applicants of their ability to challenge the lack of appealability decision. State Offices will send all other notices of ineligibility and provide appeal rights under 7 CFR part 11.

• State Offices will issue letters of condition and state when acceptance must be returned by applicant.

Preliminary Eligibility Assessment

The State Office shall make a preliminary eligibility assessment using the following criteria:

1. The pre-application was received by the submission deadline specified in the NOSA;

2. The pre-application is complete as specified by the NOSA;

3. The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

4. The proposal is for authorized purposes.

Final Applications

The National Office will notify the State Offices which pre-applications have been selected for further processing. State Offices should then follow Chapter 5 of HB–1–3560 for the processing of final applications. Final applicants will need to follow the bidding process as set forth in 7 CFR part 1924.

Equal Opportunity Survey

State Offices should provide applicants the voluntary OMB 1890–0014 form, ''Survey on Ensuring Equal Opportunity for Applicants'', (or other forms currently being used by Rural Development) and ask the applicant to complete it and return it to the State Office.

Substantial Portion of Income From Farm Labor

The NOSA restates the requirement that domestic farm laborers must receive a substantial portion of their income from ''farm labor''. Further explanation of this requirement can be found in the regulation at 7 CFR 3560.576(b)(2) and Chapter 6, attachment 6–H of HB–2–3560. The term ''farm labor'' is defined at 7 CFR 3560.11 and further clarification is provided by Chapter 12, Attachment 12–A-of HB–1–3560.

Obligation of funds and Documentation of Underwriting and Costs

All loan requests must be analyzed at the feasibility stage and again prior to obligation to determine the minimum amount of assistance that is needed for the proposal. The Multi-Family Housing Underwriting Request Form considers the sources and uses of all assistance proposed, *i.e.,* all loans, grants, equity, and any other assistance. State Offices must obligate funds by the announced deadline. Form RD 1940–1, ''*Request for Obligation of Funds*'', should refer to assistance codes ''322'' for loans and ''323'' for grants. When obligating funds, the estimated development costs must be entered into the Automated Multi-Family Housing Accounting System (AMAS) using the M5V screen. Once construction is completed, the actual development costs must be entered into AMAS using the M5VA screen. Guidance can be found in Chapter 2 of the AMAS manual (Stock #66, pages 9–15).

Questions regarding this letter may be directed to Mirna Reyes-Bible of the Multi-Family Housing Preservation and Direct Loan Division, at (202) 720–1753.

G. Equal Opportunity and Non-Discrimination Requirements

In accordance with Federal civil rights law and United States Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program. Political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html,* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of a complaint form, call, (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400

Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email at: program.intake@usda.gov*.

USDA is an equal opportunity provider, employer, and lender.

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2019–14390 Filed 7–5–19; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the New York Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on: Friday, July 12, 2019. The purpose of the meeting is to discuss testimony received at the hearing regarding Education Funding in New York.

DATES: Friday, July 12, 2019 at 12:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

SUPPLEMENTARY INFORMATION:

Public Call-In Information: Conference call-in number: 1–800–353–6461 and conference ID# 4613655.

Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–353–6461 and conference ID# 4613655. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–800–353–6461 and conference ID# 4613655.

Members of the public are invited to make statements during the open comment period of the meetings or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Midwest Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov*. Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwest Regional Office at the above phone numbers, email or street address.

Agenda

Friday, July 12, 2019

- Open—Roll Call
- Discussion of testimony—hearing on Education Funding
- Open Comment
- Next Steps
- Adjourn

Dated: July 1, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–14386 Filed 7–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau Of Industry And Security

Order Denying Export Privileges

In the Matter of: Olaf Tepper, Inmate Number: 25093–052, Moshannon Valley Correctional Institution, 555 Geo Drive, Philipsburg, PA 16866.

On August 3, 2018, in the U.S. District Court for the Northern District of New York, Olaf Tepper (''Tepper'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C § 1701, *et seq.* (2012)) (''IEEPA''). Specifically, Tepper was convicted of willfully conspiring to export and cause to be exported from the United States to Germany gas turbine parts, with knowledge and reason to know that such goods were intended specifically for re-exportation, directly and indirectly, to Iran, without having first obtained the required authorization from the U.S Department of the Treasury's Office of Foreign Assets Control. Tepper was sentenced to 24 months in prison, a fine of $5,000, and an assessment of $400.

The Export Administration Regulations (''EAR'' or ''Regulations'') are administered and enforced by the U.S. Department of Commerce's Bureau of Industry and Security (''BIS'').[1] Section 766.25 of the Regulations provides, in pertinent part, that the ''Director of [BIS's] Office of Exporter Services, in consultation with the Director of [BIS's] Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of . . . the International Emergency Economic Powers Act (50 U.S.C 1701–1706).'' 15 CFR 766.25(a). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d).[2] In addition, pursuant to Section 750.8 of the Regulations, BIS's Office of Exporter Services may revoke any BIS-issued licenses in which the person had an interest at the time of his/her conviction.[3]

BIS has received notice of Tepper's conviction for violating IEEPA, and has

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[2] *See also* Section 11(h) of the EAA, 50 U.S.C. 4610(h) (Supp. III 2015); Sections 1760(e) and 1768 of ECRA, Title XVII, Subtitle B of Public Law 115–232, 132 Stat. 2208, 2225 and 2233 (Aug. 13, 2018); and note 1, *supra.*

[3] *See* notes 1 and 2, *supra.*

provided notice and an opportunity for Tepper to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has received a two-page submission from Tepper.

Based upon my review of the record, including Tepper's submission and the facts available to BIS, and my consultations with BIS's Office of Export Enforcement, including its Director, I have decided to deny Tepper's export privileges under the Regulations for a period of 10 years from the date of Tepper's conviction. I have also decided to revoke all BIS-issued licenses in which Tepper had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

First, from the date of this Order until August 3, 2028, Olaf Tepper with a last known address of Inmate Number: 25093–052, Moshannon Valley Correctional Institution, 555 Geo Drive, Philipsburg, PA 16866, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Tepper by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Tepper may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Tepper and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until August 3, 2028.

Issued this 28th day of June, 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2019–14434 Filed 7–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity for appointment to serve as a District Export Council member.

SUMMARY: The Department of Commerce is currently seeking nominations of individuals for consideration for appointment by the Secretary of Commerce to serve as members of one of the 61 District Export Councils (DECs) nationwide. DECs are closely affiliated with the U.S. Export Assistance Centers (USEACs) of the U.S. and Foreign Commercial Service (US&FCS), and play a key role in the planning and coordination of export activities in their communities.

DATES: Nominations for individuals to a DEC must be received by the local USEAC Director by 5:00 p.m. local time on August 10, 2019.

ADDRESSES: Contact the Director of your local USEAC for information on how to submit your nomination on-line. You may identify your local USEAC by entering your zip code online at *http://export.gov/usoffices/index.asp.*

FOR FURTHER INFORMATION CONTACT: Please use the information listed in the **ADDRESSES** section to contact the Director of your local USEAC for more information on DECs and the nomination process. For general program information, contact Laura Barmby, National DEC Liaison, US&FCS, at (202) 482–2675.

SUPPLEMENTARY INFORMATION: District Export Councils support the mission of US&FCS by facilitating the development of an effective local export assistance network, supporting the expansion of export opportunities for local U.S. companies, serving as a communication link between the business community and US&FCS, and assisting in coordinating the activities of trade assistance partners to leverage available resources. Individuals appointed to a DEC become part of a select corps of trade professionals dedicated to providing international trade leadership and guidance to the local business community and assistance to the Department of Commerce on export development issues.

Nomination Process: Each DEC has a maximum membership of 35. Approximately half of the positions are open on each DEC for the four-year term

that begins on January 1, 2020, and runs through December 31, 2023. All potential nominees must complete an online nomination form and consent to sharing of the information on that form with the DEC Executive Committee for its consideration, and consent, if appointed, to sharing of their contact information with other agencies and organizations with a focus on trade.

Eligibility and Appointment Criteria: Appointment is based upon an individual's international trade leadership in the local community, ability to influence the local environment for exporting, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to DEC activities. Members must be employed as exporters or export service providers or in a profession which supports U.S. export promotion efforts. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts. DEC member appointments are made without regard to political affiliation. DEC membership is open to U.S. citizens and permanent residents of the United States. As representatives of the local exporting community, DEC members must reside in, or conduct the majority of their work in, the territory that the DEC covers. DEC membership is not open to federal government employees. Individuals representing foreign governments, including individuals registered with the Department of Justice under the Foreign Agents Registration Act, must disclose such representation and may be disqualified if the Department determines that such representation is likely to impact the ability to carry out the duties of a DEC member or raise an appearance issue for the Department.

Selection Process: Nominations of individuals who have applied for DEC membership will be forwarded to the local USEAC Director for the respective DEC for that Director's consideration. The local USEAC Director ensures that all nominees meet the membership criteria outlined below. The local USEAC Director then, in consultation with the local DEC Executive Committee, evaluates all nominations to determine their interest, commitment, and qualifications. In reviewing nominations, the local USEAC Director strives to ensure a balance among exporters from a manufacturing or service industry and export service providers. A fair representation should be considered from companies and organizations that support exporters, representatives of local and state government, and trade organizations and associations. Membership should reflect the diversity of the local business community, encompass a broad range of businesses and industry sectors, and be distributed geographically across the DEC service area.

For current DEC members seeking reappointment, the local USEAC Director, in consultation with the DEC Executive Committee, also carefully considers the nominee's activity level during the previous term and demonstrated ability to work cooperatively and effectively with other DEC members and US&FCS staff. As appointees of the Secretary of Commerce in high-profile positions, though volunteers, DEC members are expected to actively participate in the DEC and support the work of local US&FCS offices. Those that do not support the work of the office or do not actively participate in DEC activities will not be considered for re-nomination.

The Executive Secretary determines which nominees to forward to the US&FCS Office of U.S. Field for further consideration for recommendation to the Secretary of Commerce in consultation with the local DEC Executive Committee. A candidate's background and character are pertinent to determining suitability and eligibility for DEC membership. Since DEC appointments are made by the Secretary, the Department must make a suitability determination for all DEC nominees. After completion of a vetting process, the Secretary selects nominees for appointment to local DECs. DEC members are appointed by and serve at the pleasure of the Secretary of Commerce.

Authority: 15 U.S.C. 1512 and 4721.

Anthony Diaz,

Program Analyst, International Trade Administration.

[FR Doc. 2019–14477 Filed 7–5–19; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG949

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to National Wildlife Refuge Complex Research, Monitoring, and Maintenance Activities in Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Fish and Wildlife Service (USFWS) to incidentally harass, by Level B harassment only, marine mammals during biological research, monitoring, and maintenance activities at the Eastern Massachusetts National Wildlife Refuge Complex (Complex).

DATES: This Authorization is effective from June 12, 2019 through June 11, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the

affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On March 16, 2016, NMFS received an application from the USFWS for the taking of two species of marine mammals incidental to research, monitoring, and maintenance activities within the Complex. The USFWS's request was for take of gray seals (*Halichoerus grypus atlantica*) and harbor seals (*Phoca vitulina concolor*) by Level B harassment. A notice of proposed IHA and request for comments was published in the **Federal Register** on January 12, 2017 (82 FR 3738). We subsequently published the final notice of our issuance of the IHA on March 2, 2017 (82 FR 12342) making the IHA valid from April 1, 2017 through March 31, 2018.

On December 5, 2017, NMFS received a request from the USFWS for an IHA for takes of marine mammals incidental to the same research and monitoring activities as the initial IHA. A notice of proposed IHA and request for comments was published in the **Federal Register** on March 6, 2018 (83 FR 9483). We subsequently published the final notice of our issuance of the IHA on May 2, 2018 (83 FR 19236), making the IHA valid from April 1, 2018 through March 31, 2019. That IHA was identical to the initial IHA with the same number of takes authorized and the same mitigation, monitoring, and reporting requirements.

On January 31, 2019, NMFS received a request from the USFWS for an IHA to take gray seals (*Halichoerus grypus atlantica*) and harbor seals (*Phoca vitulina concolor*) by Level B harassment incidental to ongoing annual research and monitoring activities. USFWS had received two previous IHAs (82 FR 12342, March 2, 2017; 83 FR 19236, May 2, 2018) for these activities. In their 2019 request, the USFWS also requested take of marine mammals incidental to two new activities, New England cottontail introduction and seal haulout protection. The application was determined to be adequate and complete on March 20, 2019. On April 30, 2019, NMFS published its notice of proposed IHA in the **Federal Register** for public comment (84 FR 18259).

Description of the Activity and Anticipated Impacts

The Complex is comprised of eight refuges, including its three coastal refuges: Monomoy NWR, Nantucket NWR, and Nomans Land Island (Nomans) NWR in eastern MA. The USFWS conducts ongoing biological tasks for refuge purposes at the Complex. The previous IHAs covered shorebird and seabird nest monitoring and research, roseate tern staging counts and resighting, red knot stopover study, northeastern beach tiger beetle census, and coastal shoreline change survey at Monomoy, Nantucket, and Nomans NWRs. The USFWS proposes to conduct these same activities under the 2019 IHA. The previous IHAs authorized Level B take of gray seals and harbor seals. NMFS has issued an IHA to harass these same species.

We refer to the notice of proposed IHA (84 FR 18259; April 30, 2019) and documents related to the previously issued IHAs and discuss any new or changed information here. The previous documents include the **Federal Register** notices of the previous proposed IHAs (82 FR 3738, January 12, 2017; 83 FR 9483, March 6, 2018), **Federal Register** notices of issuance of the previous IHAs (82 FR 12342, March 2, 2017; 83 FR 19236, May 2, 2018), and all associated references and documents. We also refer the reader to the USFWS's previous and current applications and monitoring reports which can be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.*

Detailed Description of the Action

A detailed description of the ongoing shorebird and seabird nest monitoring and research, roseate tern staging counts and resighting, red knot stopover study, northeastern beach tiger beetle census, and coastal shoreline change surveys can be found in the previous notices of proposed IHAs (82 FR 3738, January 12, 2017; 83 FR 9483, March 6, 2018). A detailed description of the new activities in the 2019 take request (New England cottontail reintroduction and protection of seal haulout areas) is found in the notice of proposed IHA (84 FR 18259; April 30, 2019).

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to the 2019–2020 IHA. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events (UMEs), and recent scientific literature, to evaluate the current status of the affected species.

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire, and Massachusetts. This event has been declared a UME. Additionally, seals showing clinical signs of disease have stranded as far south as Virginia, although not in elevated numbers. Therefore, the UME investigation now encompasses all seal strandings from Maine to Virginia. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus. As of May 31, 2019, the total number of seals included in the UME was 2,435. More information on this UME is available at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the previous IHAs, which remains applicable to the issuance of the proposed 2019–2020 IHA. Although there is currently an ongoing UME involving gray and harbor seals, the increased mortality appears to be primarily due to infection with phocine distemper virus. As such, NMFS has determined that no new information affects our original analysis of impacts under the 2018–2019 IHA.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. All estimated take is expected to be in the form of Level B harassment. The methods of estimating take for the 2019–2020 IHA are identical to those used in the 2018–2019 IHA (*i.e.,* by multiplying the maximum number of seals estimated to be present at each location by the number of events at each location that may result in disturbance). Take from the two newly included activities was estimated in the same manner. The total authorized gray seal takes are presented in Table 1.

TABLE 1—ESTIMATED NUMBER OF GRAY SEAL TAKES (BY LEVEL B HARASSMENT) PER ACTIVITY AT MONOMOY, NANTUCKET, AND NOMANS NWRS

Activity	Takes per event	Events per activity	Total takes
Shorebird and Seabird Monitoring & Research	1000 (Monomoy) 50 (Nantucket) 10 (Nomans)	34 (Monomoy) 8 (Nantucket) 3 (Nomans)	34,430
Roseate Tern Staging Counts & Resighting	10 (Monomoy) 10 (Nantucket)	6 (Monomoy) 4 (Nantucket)	100
Red Knot Stopover Study	250 (Monomoy) 150 (Cape Cod)	5 (Monomoy) 5 (Cape Cod)	2,000
Northeastern Beach Tiger Beetle Census	750 (Monomoy)	3 (Monomoy)	2,250
Coastal Shoreline Change Survey	500 (Monomoy)	1 (Monomoy)	500
New England Cottontail Introduction	10 (Nomans)	20 (Nomans)	200
Seal Haul Out Protection	25 (Nantucket)	10 (Nantucket)	250
Total takes			39,730

Estimated take of harbor seals was estimated using methods identical to the 2018–2019 IHA (*i.e.,* estimating five percent of gray seal takes). Total authorized takes of gray seals and harbor seals are shown in Table 2.

TABLE 2—TOTAL ESTIMATED TAKE OF MARINE MAMMALS, RELATIVE TO POPULATION SIZE

Species	Estimated take	Stock abundance	Percent (comparison of instances of take to stock abundance)
Gray seal	39,730	[a] 27,131 [b] (451,131)	146 (8.81)
Harbor seal	1,987	75,834	2.62

[a] Abundance in U.S. waters (Hayes *et al.,* 2018)
[b] Overall Western North Atlantic stock abundance (Hayes *et al.,* 2018)

Based on the stock abundance estimate presented in the 2017 SARS, the take number of gray seals exceeds the number of gray seals in U.S. waters (Table 2). However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities. The number of individual seals taken is also assumed to be less than the take estimate since these species show high philopatry (Waring *et al.,* 2016; Wood *et al.,* 2011). We expect the take numbers to represent the number of exposures (*i.e.,* instances of take), but assume that the same seals may be behaviorally harassed over multiple days, and the likely number of individual seals that may be harassed would be less. In addition, this project occurs in a small portion of the overall range of the Northwest Atlantic population of gray seals. While there is evidence of haulout site philopatry, resights of tagged and branded animals and satellite tracks of tagged animals show movement of individuals between the United States and Canada (Puryear *et al.,* 2016). The percentage of time that individuals are resident in U.S. waters is unknown (NMFS 2017). Genetic evidence provides a high degree of certainty that the Western North Atlantic stock of gray seals is a single stock (Boskovic *et al.,* 1996; Wood *et al.,* 2011). Thus, although the U.S. stock estimate is only 27,131, the overall stock abundance of animals in United States and Canadian waters is 451,131. The gray seal take estimate for this project represents less than nine percent of the overall Western North Atlantic stock abundance (Table 2) if every separate instance of take were assumed to accrue to a different individual, and because this is not the case, the percentage is likely significantly lower.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures described here are identical to those included in the **Federal Register** notice announcing the final 2018–2019 IHA (83 FR 19236; May 2, 2018) and apply to all activities described in previous **Federal Register** notices (*i.e.,* 83 FR 9483; March 6, 2018) and the two new activities included in this document. The discussion of the least practicable adverse impact included in the **Federal Register** notice of final IHA (83 FR 19236; May 2, 2018) remains accurate. The following measures are included in this IHA:

Time and Frequency—The USFWS would conduct all proposed activities throughout the course of the year between April 1 and November 30, outside of the seasons of highest seal abundance and pupping at the Complex. Closure of beaches used by seals may occur year-round at Nantucket NWR.

Vessel Approach and Timing Techniques—The USFWS must ensure that its vessel approaches to beaches with pinniped haulouts are conducted so as to not disturb marine mammals as most practicable. To the extent possible, the vessel must approach the beaches in a slow and controlled approach, as far away as possibly from haulouts to prevent or minimize flushing. Staff must also avoid or proceed cautiously when operating boats in the direct path of swimming seals that may be present in the area.

Avoidance of Acoustic Impacts from Cannon Nets—Cannon nets have a measured source level (SL) of 128 decibels (dB) at one meter (m) (estimated based on a measurement of 98.4 dB at 30 m; L. Niles, pers. comm., December 2016); however, the sound pressure level (SPL) is expected to be less than the thresholds for airborne pinniped disturbance (*e.g.,* 90 dB for harbor seals, and 100 dB for all other

pinnipeds) at 80 yards from the source. The USFWS must stay at least 100 m from all pinnipeds if cannon nets are to be used for research purposes.

Avoidance of Visual and Acoustic Contact with People—The USFWS must instruct its members and research staff to avoid making unnecessary noise and not allow themselves to be seen by pinnipeds whenever practicable. USFWS staff must stay at least 50 yards from hauled out pinnipeds, unless it is absolutely necessary to approach seals closer, or potentially flush a seal, in order to continue conducting endangered species conservation work. When disturbance is unavoidable, staff must work quickly and efficiently to minimize the length of disturbance. Researchers and staff must do so by proceeding in a slow and controlled manner, which allows for the seals to slowly flush into the water. Staff must also maintain a quiet working atmosphere, avoiding loud noises, and using hushed voices in the presence of hauled out pinnipeds. Pathways of approach to the desired study or nesting site must be chosen to minimize seal disturbance if an activity event may result in the disturbance of seals. USFWS staff must scan the surrounding waters near the haulouts, and if predators (*i.e.,* sharks) are seen, seals must not be flushed by USFWS staff. The USFWS must avoid disturbance of mothers and pups by either rescheduling surveys, if possible, or refraining from conducting activities that may cause high-level disturbance (*e.g.,* flushing or long movements over land.

Marine Mammal Monitoring—The USFWS must monitor seals as project activities are conducted. Monitoring requirements in relation to the USFWS's activities include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the research activities, including location, date, and time of the event for each site and activity. In addition, the USFWS will record observations regarding the number and species of any marine mammals either observed in the water or hauled out. Behavior of seals must be recorded on a three point scale: 1 = alert reaction, not considered harassment; 2 = moving at least two body lengths, or change in direction greater than 90 degrees; 3 = flushing (Table 3). USFWS staff must also record and report all observations of sick, injured, or entangled marine mammals to the Office of Protected Resources, NMFS, and the Greater Atlantic Regional Stranding Coordinator, NMFS. Tagged or marked marine mammals must also be recorded and reported to the appropriate research organization or federal agency, as well as any rare or unusual species of marine mammal. Photographs must be taken when possible. This information must be incorporated into a report for NMFS at the end of the season. The USFWS must also coordinate with any university, state, or federal researchers to attain additional data or observations that may be useful for monitoring marine mammal usage at the activity sites.

TABLE 3—DISTURBANCE SCALE OF PINNIPED RESPONSES TO IN-AIR SOURCES TO DETERMINE TAKE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only Levels 2 and 3 are considered take, whereas Level 1 is not.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of other marine mammal occurs, and such action may be a result of the USFWS's activities, the USFWS must suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Reporting—The USFWS must submit a draft report to NMFS Office of Protected Resources no later than 90 days after the conclusion of research and monitoring activities in the 2018 season. The report must include a summary of the information gathered pursuant to the monitoring requirements set forth in the proposed IHA. The USFWS must submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft report. If the USFWS receives no comments from NMFS on the draft report, NMFS will consider the draft report to be the final report. The reporting requirements included in this IHA are identical to those described in the previous IHA (83 FR 19236, May 2, 2018).

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on April 30, 2019 (84 FR 18259). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter, providing comments as described below.

Comment: The Commission questioned whether the public notice provisions for IHA Renewals fully satisfy the public notice and comment provision in the MMPA and discussed the potential burden on reviewers of reviewing key documents and developing comments quickly. Additionally, the Commission recommended that NMFS use the IHA Renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on IHA Renewals within the limitations of processing IHA applications efficiently. The **Federal Register** notice for the proposed IHA (84 FR 18259; April 30, 2019) previously identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the Request for Public Comments section of the initial proposed IHA and thus encourages submission of comments on the potential of a one-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal

IHA, we publish a notice of the proposed IHA Renewal in the **Federal Register** and provide an additional 15 days for public comment, for a total of 45 days of public comment. We will also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA.

NMFS also strives to ensure the public has access to key information needed to submit comments on a proposed IHA, whether an initial IHA or a Renewal IHA. The agency's website includes information for all projects under consideration, including the application, references, and other supporting documents. Each **Federal Register** notice also includes contact information in the event a commenter has questions or cannot find the information they seek.

Regarding the Commission's comment that Renewal IHAs should be limited to certain types of projects, NMFS has explained on its website and in individual **Federal Register** notices that Renewal IHAs are appropriate where the continuing activities are identical, nearly identical, or a subset of the activities for which the initial 30-day comment period applied. Where the commenter has likely already reviewed and commented on the initial proposed IHA for these activities, the abbreviated additional comment period is sufficient for consideration of the results of the preliminary monitoring report and new information (if any) from the past year.

Determinations

The USFWS proposes to conduct research and monitoring activities that are nearly identical to those conducted previously. Take of marine mammals from two new activities has been included in this IHA but the potential impacts to marine mammals from these activities are identical to those previously analyzed for the issuance of the 2018 IHA. Therefore, the potential effects from Level B harassment of marine mammals previously analyzed remain applicable, as do NMFS prior determinations.

When issuing the 2018 IHA, NMFS found the USFWS's activities, in their entirety, would have a negligible impact to species or stocks' rates of recruitment and survival and the amount of taking would be small relative to the population size of such species or stock. This IHA authorizes more takes of seals by Level B harassment than the previously issued IHAs (82 FR 12342, March 2, 2017; 83 FR 19236, May 2, 2018) but the amount of taking is still small relative to the population size of the affected species and stocks (*i.e.,* less than nine percent). The IHA includes identical required mitigation, monitoring, and reporting measures as the 2018 IHA. In conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the USFWS's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to the USFWS for the harassment of small numbers of marine mammals incidental to conducting research and monitoring activities at the Complex for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–14457 Filed 7–5–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Integrated Drought Information System National Drought Forum

AGENCY: Climate Program Office (CPO), Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The National Integrated Drought Information System (NIDIS) Program Office and the National Drought Resilience Partnership (NDRP) will host the 2nd National Drought Forum on July 30–31, 2019.

DATES: The Forum will be held Tuesday, July 30, 2019 from 9:00 a.m. EST to 4:30 p.m. EDT and Wednesday July 31, 2019 from 9:00 a.m. EST to 4:30 p.m. EDT. These times and the agenda topics are subject to change.

ADDRESSES: The meeting will be held at the United States Institute of Peace, 2301 Constitution Avenue NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Murielle Gamache-Morris, Secretariat for the National Drought Forum, David Skaggs Research Center, Room GD102, 325 Broadway, Boulder CO 80305. Email: *murielle.gamache-morris@noaa.gov.*

SUPPLEMENTARY INFORMATION: The National Integrated Drought Information System (NIDIS) was authorized by Congress in 2006 (Pub. L. 109–430) and reauthorized on March 6, 2014 and January 7, 2019 with a mandate to coordinate and integrate drought research, building upon existing federal, tribal, state, and local partnerships in support of creating a national drought early warning information system.

The National Drought Resilience Partnership (NDRP) is a partnership made up of Federal departments and agencies formed to improve Federal collaboration and promote long-term drought resilience nationwide.

Status: This meeting will be open to public participation. Individuals interested in attending should register at *https://cpaess.ucar.edu/meetings/2019/2nd-national-drought-forum.* Please refer to this web page for the most up-to-date meeting times and agenda. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: This meeting is accessible to people with disabilities. Requests for special accommodations may be directed no later than 5:00 p.m. on July 15, 2019, to Murielle Gamache-Morris, Secretariat for the National Drought Forum, David Skaggs Research Center, Room GD102, 325 Broadway, Boulder CO 80305; Email: *murielle.gamache-morris@noaa.gov.*

Matters To Be Considered: The meeting will include the following topics: (1) Lessons learned and progress towards U.S. drought readiness since the last Forum in 2012; (2) strengthening the state-federal relationship to realize greater collaboration and promote cooperative partnerships with U.S. businesses to address drought; (3) new information and opportunities for coordination that help move the Nation from a reactive to a proactive approach to drought risk management; and (4) action items that could improve U.S. drought resilience.

Dated: June 19, 2019.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–14459 Filed 7–5–19; 8:45 am]

BILLING CODE 3510–KD–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Thursday, July 11, 2019.

PLACE: CFTC Headquarters, Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- Supplemental Proposal on Exemption from Derivatives Clearing Organization Registration;
- Proposed Rule on Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations; and
- Proposed Rule on Customer Margin Rules relating to Security Futures.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Dated: July 2, 2019.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2019–14500 Filed 7–3–19; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Fair Lending Report of the Bureau of Consumer Financial Protection, June 2019

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Fair Lending Report of the Bureau of Consumer Financial Protection.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its seventh Fair Lending Report of the Bureau of Consumer Financial Protection (Fair Lending Report) to Congress. The Bureau is committed to ensuring fair access to credit and eliminating discriminatory lending practices. This report describes the Bureau's fair lending activities in prioritization, supervision, enforcement, rulemaking, interagency coordination, and outreach for calendar year 2018.

DATES: The Bureau released the June 2019 Fair Lending Report on its website on June 28, 2019.

FOR FURTHER INFORMATION CONTACT: Bobby Conner, Senior Policy Counsel, Fair Lending, at 1–855–411–2372. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Fair Lending Report of the Bureau of Consumer Financial Protection, June 2019

Message From Kathleen L. Kraninger, Director

This Fair Lending Report describes the Consumer Financial Protection Bureau's 2018 activities to expand fair, equitable, and nondiscriminatory access to credit and to ensure that consumers are protected from discrimination.[1]

Earlier this spring I outlined my priorities for how the Bureau will use its tools to carry out our mission. I shared how Congress granted to the Director the tools of education, regulation, supervision, and enforcement, each of which serves an important component in the Bureau's execution of its mission. I believe that the best application of these tools is to focus on prevention of harm to consumers and that includes protecting consumers from unfair, deceptive and abusive acts or practices as well as from discrimination. The Bureau's very purpose is to ensure that all consumers have access to consumer financial products and services which is based on having fair, transparent, and competitive markets.

Protecting consumers from discrimination is one of the primary objectives laid out in the Dodd-Frank Act—an objective that the Bureau takes very seriously. Under my leadership, the Bureau will continue to vigorously enforce fair lending laws in our jurisdiction, and will stand on guard against unlawful discrimination in credit. In addition to that core work, the Bureau will continue to explore cutting-edge fair lending issues including how consumer-friendly innovation can increase access to credit to all consumers—and especially unbanked and underbanked consumers and their communities.

I am truly excited to take the Bureau's work in fair lending to a new level, and I look forward to working with all stakeholders on these important matters.

Sincerely,

Kathleen L. Kraninger.

Message from Patrice Alexander Ficklin, *Director, Fair Lending.*

2018 marked the Office of Fair Lending and Equal Opportunity's seventh full year of spearheading the Bureau's efforts to fulfill its fair lending mandate. It was also a year of transition for the Office as it prepared to move to the Director's office as part of the Office of Equal Opportunity and Fairness. Throughout the transition, the Office has continued to focus on promoting fair, equitable, and nondiscriminatory access to credit and has embarked on new efforts to coordinate the Bureau's fair lending work both internally, and with other governmental agencies, industry, and stakeholders to encourage innovation in expanding responsible credit access.

The Bureau's supervisory and enforcement activity in 2018 focused on

[1] (12 U.S.C. 5511(b)(2).

mortgage lending, small business lending, and student loan servicing. Our mortgage lending activity focused on redlining, underwriting, pricing, steering, servicing, and Home Mortgage Disclosure Act data integrity. Redlining continues to be a priority for the Bureau in both mortgage lending and small business lending. The Bureau continues to facilitate implementation of the 2010 Dodd Frank Act amendments to HMDA and the subsequent changes under the Economic Growth, Regulatory Relief, and Consumer Protection Act.[2]

On July 18, 2018, the Bureau announced the creation of its Office of Innovation and transitioned the work of Project Catalyst to this new office. The Bureau encourages responsible innovations that could be implemented in a consumer-friendly way to help serve populations currently underserved by the mainstream credit system. The Office worked closely with Project Catalyst since its inception to increase consumer access to credit. The Fair Lending office looks forward to the continued close working relationship with the Office of Innovation.

In September 2018, the Office held a symposium, Building a Bridge to Credit Visibility, the first in a series of planned convenings aimed at expanding access to credit for consumers who face barriers to accessing credit. The Bureau estimates that 45 million Americans are credit invisible or lack sufficient credit history which in turn causes those consumers to face barriers to accessing credit, or pay more for credit. The Symposium was attended, both in-person and via web-based livestream video, by hundreds of stakeholders from industry, government, think tanks, academia, and consumer advocacy and civil rights organizations, representing a diverse range of experiences and perspectives.

Along with the rest of the Bureau, the Office welcomed our new Director, Kathy Kraninger, in early December 2018 and began work to implement her commitment to enforce the fair lending laws under the Bureau's jurisdiction using the tools of education, rulemaking and guidance, supervision and enforcement.

Since its inception, the Office has done tremendous work in fulfilling its Dodd-Frank mandate to protect America's consumers from lending discrimination and promote credit access.[3]

Sincerely,

Patrice Alexander Ficklin.

[2] Public Law 115–174, 132 Stat. 1296 (2018).

[3] *See* Dodd-Frank Act section 1013(c)(2)(D) (codified at 12 U.S.C. 5493(c)(2)(D)).

1. Access to Credit

The Bureau is responsible for providing oversight and enforcement of Federal laws intended to ensure ''fair, equitable, and nondiscriminatory access to credit for both individuals and communities.''[4] To achieve the mission, the Bureau focuses both on preventing discrimination and addressing it when it happens. The Bureau has available a number of prevention tools: Outreach and education, and the issuance of guidance, promulgation of regulations, and supervision and enforcement.

In 2018, Fair Lending used a number of these tools and increased its focus on ensuring fair, equitable, and nondiscriminatory access to credit through: (1) Hosting a symposium on credit invisibility; (2) establishing collaboration with the new Office of Innovation; (3) monitoring a No-Action Letter; and (4) prioritizing supervisory reviews of third-party credit scoring models to further the Bureau's interest in identifying potential benefits and risks associated with the use of alternative data and modeling techniques.

1.1 Symposium and Report on Credit Visibility

The CFPB has reported in recent years, in a series of publications,[5] that roughly 20 percent of the adult population have no credit records or very limited credit records with the three Nationwide Credit Reporting Agencies (NCRAs). As a result, these ''credit invisible'' and ''unscorable'' consumers are unable to fully participate in the credit marketplace. This can limit their ability to withstand financial shocks and achieve financial stability.

In September 2018, the Bureau convened its first fair lending Symposium to address the issue of access to credit, entitled *Building a Bridge to Credit Visibility.* The Symposium was attended, both in-person and via web-based livestream video, by hundreds of stakeholders from industry, government, think tanks, academia, and consumer advocacy and civil rights organizations, representing a diverse range of experiences and perspectives. Panelists discussed strategies and innovations for overcoming barriers faced by credit invisible consumers and unscorable consumers and expanding credit access. The Symposium was held at CFPB Headquarters in Washington, DC.

The Bureau's *Building a Bridge to Credit Visibility* Symposium added to the growing body of knowledge on the credit invisible population, sometimes referred to as unbanked and underbanked. The Symposium, and the *Geography of Credit Invisibility* data point[6] released in conjunction with the Symposium, provided a platform where industry, consumer and civil rights advocates, regulators, researchers, and other stakeholders could raise awareness of the issues that credit invisible and unscorable consumers face, learn more about financial innovation that is happening, and shape plans for how to continue to increase future access to credit going forward.

At the Symposium, a number of stakeholders took part in substantive panel discussions. During the first panel, each speaker delivered a short talk on credit, exploring issues such as credit invisibility, lending deserts, and innovation to expand access to credit. During the second panel, panelists explored questions related to entry products that bridge consumers to credit visibility while also preparing them for financial success. During the third panel, panelists focused on identifying barriers and solutions to accessing credit in the small business lending space, and discussed the roles played by different stakeholders in this space. And finally, during the last panel, participants discussed the role alternative data and modeling techniques can play in expanding access to traditional credit.

A few key themes were evident across panel discussions at the Symposium. These themes can inform action planning for private and public sector stakeholders from industry, consumer and civil rights advocacy organizations, academia, and government. Some of these key themes were:

- Strengthen the business case for expanding access to credit.
- Explore innovation that expands credit access without sacrificing consumer protections.
- Understand the experience of the credit invisible population.
- Recognize that ''high-touch'' relationships are important.
- Conduct more research and data analysis.

[4] 12 U.S.C. 5493(c)(2)(A).

[5] *See* CFPB Data Point: *Becoming Credit Visible* (June 2017), *s3.amazonaws.com/files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf;* CFPB, *Who Are the Credit Invisibles? How to Help People with Limited Credit Histories* (Dec. 2016), *s3.amazonaws.com/files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf;* CFPB, *Data Point: Credit Invisibles* (May 2015), *files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.*

[6] *See* CFPB, *Data Point: The Geography of Credit Invisibility* (Sept. 2018), *s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_data-point_the-geography-of-credit-invisibility.pdf.*

• Be mindful that not all credit is equal.

At the Symposium, Jacqueline Reses from Square, Inc. and Square Capital (''Square'') gave the keynote address. Later in the day, Paul Watkins, Assistant Director of the Bureau's Office of Innovation, shared his vision for the new office. Finally, Bureau leaders ended the Symposium with a ''fireside chat,'' highlighting key themes from the day and exploring the ways the CFPB's mission provides the Bureau with tools to engage on these issues.

Additional information including the symposium agenda, a video of the symposium (with closed-captioning), and an informational blog post can be found on the Bureau's website.[7]

1.2 Collaboration With Office of Innovation

In 2018, the Bureau prioritized innovation in part to help expand fair, equitable and nondiscriminatory access to credit to underserved populations.[8] To lead this effort, on July 18, 2018, the Bureau created the Office of Innovation and transitioned the work that was being done under Project Catalyst to this new office. The Office of Innovation helps the Bureau fulfill its statutory mandate to promote competition, innovation, and consumer access within financial services. To achieve this goal, the new office focuses on creating policies to facilitate innovation, engaging with entrepreneurs and regulators, and facilitating identification of outdated and unnecessary regulations.[9] Fair Lending's focus on fair, equitable, and nondiscriminatory access to credit for individuals and communities provides for synergy with the work of the Office of Innovation.

The Office of Innovation is in the process of revising the Bureau's No Action Letter (NAL) and trial disclosure policies, and establishing a Product Sandbox, in order to increase participation by organizations seeking to advance new products and services. The Bureau encourages innovative products and services that benefit consumers, including those that promote fair, equitable, and nondiscriminatory access to credit. As part of its coordination function, the Office of Fair Lending engages with potential entrants into the Bureau's Innovation programs, including those interested in special purpose credit programs [10] to help promote credit access for underserved borrowers.

1.3 Upstart No-Action Letter

In February 2016, the Bureau issued its initial No Action Letter (NAL) policy, which provides Bureau staff the ability to evaluate an applicant's consumer financial product or service and signify that Bureau staff has no present intent to recommend initiation of supervisory or enforcement action against the entity in respect to the product or service.[11]

In 2018 Fair Lending continued to monitor Upstart Network, Inc. (Upstart) under the terms of the no-action letter it received from Bureau staff on September 14, 2017.

By way of background, Upstart is a company that uses machine learning in making credit and pricing decisions. Based in San Carlos, Calif., Upstart provides an online lending platform for consumers to apply for personal loans, including credit card refinancing, student loans, and debt consolidation. Upstart evaluates consumer loan applications using traditional factors such as credit score and income, as well as incorporating non-traditional sources of information such as education and employment history.

The no-action letter issued to Upstart signified that Bureau staff has no present intent to recommend initiation of supervisory or enforcement action against Upstart with respect to the Equal Credit Opportunity Act. The letter applies to Upstart's model for underwriting and pricing applicants as described in the company's application materials. The no-action letter is specific to the facts and circumstances of the particular company and does not serve as an endorsement of the use of any particular variables or modeling techniques. In 2018 Fair Lending monitored Upstart under the terms of the 2017 NAL. Under the terms of the no-action letter issued by Bureau staff, Upstart agreed to share certain information with the CFPB regarding the loan applications it receives, how it decides which loans to approve, and how it will mitigate risk to consumers, as well as information on how its model expands access to credit for traditionally underserved populations. In addition, Upstart agreed as part of its request for a NAL to employ other consumer safeguards. These safeguards, which are described in the application materials posted on the Bureau's website, include ensuring compliance with adverse action notice requirements, and ensuring that all of its consumer-facing communications are timely, transparent, and clear, and use plain language to convey to consumers the type of information that will be used in underwriting.

The CFPB expects that this information will further its understanding of how the types of practices employed by Upstart impact access to credit generally and for traditionally underserved populations, as well as the application of compliance management systems for these emerging practices.

1.4 Models

When making credit decisions, lenders often rely on proprietary or third-party credit scoring models. In recent years, new third-party credit scoring models have been developed for lenders based on information beyond the contents of a consumer's core credit file. The use of alternative data and modeling techniques may expand access to credit or lower credit cost and, at the same time, present fair lending risks.

In 2018, Fair Lending recommended supervisory reviews of third-party credit scoring models so that the Bureau ''keep[s] pace with the evolution of technology in consumer financial products and services in order to accomplish its strategic goals and objectives.'' [12] These recommended reviews would focus on obtaining information and learning about the models and compliance systems of third-party credit scoring companies for the purpose of assessing fair lending risks to consumers and whether the models are likely to increase access to credit. Observations from these reviews are expected to further the Bureau's interest in identifying potential benefits and risks associated with the use of

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[7] *https://www.consumerfinance.gov/about-us/events/archive-past-events/building-bridge-credit-visibility/.*

[8] Historically, the Office of Fair Lending has worked closely with the Bureau's Project Catalyst, which was established to encourage consumer-friendly innovation and entrepreneurship in markets for consumer financial products and services. Through Project Catalyst, the Bureau sought to advance consumer-friendly innovation by way of outreach to innovators, discussion of Special Purpose Credit Programs, and the No-Action Letter program. By staffing Project Catalyst Office Hours and engaging in discussions with No-Action Letter candidates, Fair Lending has worked to advance innovation.

[9] Consumer Financial Protection Bureau, *Bureau of Consumer Financial Protection Announces Director for the Office of Innovation, https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-director-office-innovation/.*

[10] Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2016* at 16–18 (June 2016), *https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_12.pdf.*

[11] The 2016 policy as submitted to the **Federal Register** is available at *https://files.consumerfinance.gov/f/201602_cfpb_no-action-letter-policy.pdf.* As of the issuance of this report, a revised NAL policy is under consideration. See Section 1.4 for more information.

[12] CFPB Strategic Plan for FY 2018–2022, *https://files.consumerfinance.gov/f/documents/cfpb_strategic-plan_fy2018-fy2022.pdf.*

alternative data and modeling techniques.

A significant focus of the Bureau's interest in models is ways that alternative data and modeling may expand access to credit for consumers who are credit invisible or who lack enough credit history to obtain a credit score. The Bureau is also interested in other potential benefits associated with the use of alternative data and modeling techniques that may directly or indirectly benefit consumers, including enhanced creditworthiness predictions, more timely information about a consumer, lower costs, and operational improvements.

2. Outreach: Promoting Fair Lending Compliance and Education

A key tool that the Bureau uses to help prevent lending discrimination is outreach and education. Pursuant to Dodd-Frank,[13] the Office of Fair Lending regularly engages in outreach with Bureau stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies, to: (1) Educate them about fair lending compliance and access to credit issues and (2) hear their views on the Bureau's work to inform the Bureau's policy decisions.

The Bureau is committed to communicating directly with all stakeholders on its policies, compliance expectations, and fair lending priorities, and to receiving valuable input about fair lending issues and how innovation can promote fair, equitable, and nondiscriminatory access to credit.

2.1 Blog Posts

The Bureau regularly uses its blog as a tool to communicate effectively to consumers and other stakeholders on timely issues, emerging areas of concern, Bureau initiatives, and more. In 2018 the Bureau published four blog posts related to fair lending topics including: Providing consumers updated information about a fair lending enforcement action,[14] announcing the Bureau's day -long Symposium, *Building a Bridge to Credit Visibility,*[15] announcing the release of a new research report on the geographic patterns of credit invisibility,[16] and noting the release of the fair lending annual report on 2017 activities.[17]

The Bureau's blog posts, including those related to fair lending, may be accessed at *www.consumerfinance.gov/blog.*

2.2 Supervisory Highlights

Supervisory Highlights has long been a report that anchors the Bureau's efforts to communicate about the Bureau's supervisory activity. More information about the fair lending topics discussed this year in *Supervisory Highlights* can be found in Section 5.1.1 of this Report. As with all Bureau resources, all editions of *Supervisory Highlights* are available on *www.consumerfinance.gov/reports.*

2.3 Speaking Engagements and Roundtables

Staff from the Bureau's Office of Fair Lending and Equal Opportunity participated in a number of outreach speaking events and roundtables throughout 2018 to: (1) Educate them about fair lending compliance and access to credit issues and (2) hear their views on the Bureau's work to inform the bureau's policy decisions. In these events, staff shared information on fair lending priorities, emerging issues, and heard feedback from stakeholders on fair lending issues and how innovation can promote fair, equitable, and nondiscriminatory access to credit. Some examples of the topics covered include fair lending priorities, fair lending model governance, innovations in lending, redlining, HMDA, small business lending, alternative data, and installment lending contracts. In addition to these outreach events, the 2018 Symposium, discussed in Section 1.1 of this Report, served as a principal vehicle to exchange information related to access to credit to inform the Bureau's policy making activity.

3.0 Guidance and Rulemaking

3.1 HMDA Exemptions Under EGRRCPA

As part of the Bureau's efforts to enforce Home Mortgage Disclosure Act (HMDA) and its implementing regulation, Regulation C, on August 31, 2018, the Bureau issued an interpretive and procedural rule to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which earlier in 2018 amended certain provisions of HMDA.[18]

The rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for negative Community Reinvestment Act examination history. The rule also provided that at a later date, the Bureau would initiate a notice-and-comment rulemaking to incorporate these interpretations and procedures into Regulation C and further implement the Act.[19]

The Bureau also engaged in a number of non-rulemaking activities to facilitate the EGRRCPA implementation. The Bureau reviewed its compliance guides and examination manuals to make appropriate updates, as well as engaged with stakeholders regarding the issuance of guidance to meet the statutory requirements and facilitate compliance.[20]

3.2 HMDA Data Disclosure

On December 21, 2018, the Bureau issued final policy guidance describing

[13] Dodd-Frank Act section 1013(c)(2)(C) (codified at 12 U.S.C. 5493(c)(2)(C)).

[14] Patrice Alexander Ficklin, *What you need to know to get money from the settlement with Bancorp South Bank for alleged discrimination,* Consumer Financial Protection Bureau (June 5, 2018), *https://www.consumerfinance.gov/about-us/blog/what-you-need-know-get-money-settlement-bancorpsouth-bank-alleged-discrimination/.*

[15] Patrice Alexander Ficklin, *Save the date for the 'Building a Bridge to Credit Visibility' symposium,* Consumer Financial Protection Bureau (Aug. 02, 2018), *https://www.consumerfinance.gov/about-us/blog/save-date-building-bridge-credit-visibility-symposium/.*

[16] Ken Brevoort & Patrice Ficklin, *New research report on the geography of credit invisibility,* Consumer Financial Protection Bureau (Sept. 19, 2018), *https://www.consumerfinance.gov/about-us/blog/new-research-report-geography-credit-invisibility/.*

[17] Patrice Alexander Ficklin, *Promoting fair, equitable, and nondiscriminatory access to credit: 2017 Fair Lending Report* (Dec. 4, 2018), *https://www.consumerfinance.gov/about-us/blog/promoting-fair-equitable-and-nondiscriminatory-access-credit-2017-fair-lending-report/.*

[18] Public Law 115–174, 132 Stat. 1296 (2018).

[19] Consumer Financial Protection Bureau, Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C) (September 7, 2018), 45325–45333, 83 FR 45325, *https://www.federalregister.gov/documents/2018/09/07/2018–19244/partial-exemptions-from-the-requirements-of-the-home-mortgage-disclosure-act-under-the-economic.*

[20] Kelly Cochran, *Fall 2018 rulemaking agenda* (October 17, 2018), *https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/.*

modifications that it intends to apply to the HMDA data reported by financial institutions before the data are made public on the loan level. In issuing the guidance, the Bureau considered how appropriately to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes. The policy guidance applies to data compiled by financial institutions in 2018 that will be made available to the public beginning in 2019. In addition, after consideration of stakeholder comments urging that determinations concerning the disclosure of loan-level HMDA data be effectuated through more formal processes, the Bureau also has decided to add a new notice-and-comment rulemaking to govern the disclosure of HMDA data in future years, which was included in the Bureau's Fall 2018 rulemaking agenda.

3.3 ECOA and Regulation B

On May 21, 2018, in response to the enactment of a Congressional resolution disapproving the Bureau's indirect auto lending guidance, the Bureau's former Acting Director issued a statement indicating the Bureau's intent to reexamine requirements of the ECOA regarding the disparate impact doctrine in light of recent Supreme Court case law addressing the availability of disparate impact legal theory under the Fair Housing Act.[21]

On April 19, 2019, the Bureau announced that it would be conducting a symposia series exploring consumer protections in the financial services marketplace. One topic of the symposia series is disparate impact and the Equal Credit Opportunity Act.[22] Details regarding the symposium will be announced on the Bureau's website at a later time.

3.4 Small Business Data Collection

Section 1071 of the Dodd-Frank Act amends ECOA to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that specific data be collected, maintained, and reported, including but not limited to the type of loan applied for, the amount of credit applied for, the type of action taken with regard to each application, the census tract of the principal place of business of the loan applicant, and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of section 1071.

In connection with its Fall 2018 Rulemaking Agenda,[23] the Bureau announced that in light of the need to focus additional resources on various HMDA initiatives, the Bureau had adjusted its timeline for implementing the statutory directive contained in section 1071 from pre-rule status to longer-term action status. More recently, in connection with its Spring 2019 Rulemaking Agenda,[24] the Bureau announced it intends to recommence work later this year to develop rules to implement section 1071 of the Dodd-Frank Act. The Bureau will recommence its work on section 1071 with a symposium on small business loan data collection.[25] Details regarding the symposium will be announced on the Bureau's website at a later time.

3.5 Amicus Program

The Bureau files amicus, or friend-of-the-court, briefs in significant court cases concerning the federal consumer financial protection laws, including ECOA. These amicus briefs provide the courts with Bureau views on significant consumer financial protection issues. Information regarding the Bureau's amicus program, including a description of the amicus briefs it has filed, is available on the Bureau's website.[26]

4. Supervision and Enforcement Prioritization

4.1 Risk-Based Prioritization

Because Congress charged the Bureau with responsibility for overseeing many lenders and products, SEFL, including the Office of Fair Lending, have long-used a risk-based approach to prioritize supervisory examinations and enforcement activity, to help ensure focus on areas that present substantial risk of credit discrimination for consumers.[27] This same approach continued in 2018.

As part of the prioritization process, the Bureau identifies emerging developments and trends by monitoring key consumer financial markets. If this market intelligence identifies fair lending risks in a particular market that require further attention, that information is incorporated into the prioritization process to determine the type and extent of attention required to address those risks.

The fair lending prioritization process incorporates a number of additional factors as well, including: Tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of HMDA and other publicly available data.

4.2 Fair Lending Supervisory and Enforcement Priorities

While the Bureau remains committed to ensuring that consumers are protected from discrimination in all credit markets under its legal authority, as a result of its annual risk-based prioritization process in 2018, the Bureau identified the following new focus areas for fair lending examinations or investigations:

- Student Loan Origination: Whether there is discrimination in policies and practices governing underwriting and pricing.
- Debt Collection and Model Use: Whether there is discrimination in policies and practices governing auto servicing and credit card collections, including the use of models that predict recovery outcomes.

The Bureau's fair lending supervision work also continued to focus on mortgage origination, mortgage servicing, and small business lending, as in previous years.

The Bureau's mortgage origination work continued to focus on: (a) Redlining and whether lenders intentionally discouraged prospective applicants living in or seeking credit in minority neighborhoods from applying for credit; (b) assessing whether there is discrimination in underwriting and pricing processes as well as steering; and (c) HMDA data integrity and

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[21] *Statement of the Bureau of Consumer Financial Protection on enactment of S.J. Res. 57* (May 21, 2018), *https://www.consumerfinance.gov/about-us/newsroom/statement-bureau-consumer-financial-protection-enactment-sj-res-57/; see also Fall 2018 Regulatory Agenda Preamble (Aug. 30, 2018), available at https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201810/Preamble_3170.html.*

[22] *Consumer Financial Protection Bureau Announces Symposia Series* (April 8, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/.*

[23] Kelly Cochran, *Fall 2018 rulemaking agenda* (October 17, 2018), *https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/.*

[24] Diane Thompson, *Spring 2019 rulemaking agenda* (May 22, 2019), *https://www.consumerfinance.gov/about-us/blog/spring-2019-rulemaking-agenda/.*

[25] *Consumer Financial Protection Bureau Announces Symposia Series* (April 8, 2019), *https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/.*

[26] *https://www.consumerfinance.gov/policy-compliance/amicus/.*

[27] For additional information regarding the Bureau's risk-based approach in prioritizing supervisory examinations, see Section 3.2.3, Risk-Based Approach to Examinations, *Supervisory Highlights Summer 2013,* available at *http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf.*

validation (supporting ECOA exams) as well as HMDA diagnostic work (monitoring and assessing new rule compliance).

The Bureau's mortgage servicing fair lending supervision work explored whether there is discrimination in the default servicing processes at particular institutions, and focused on whether there are weaknesses in fair lending-related compliance management systems.

The Bureau's small business lending supervision work focused on assessing whether (1) there is discrimination in application, underwriting, and pricing processes, (2) creditors are redlining, and (3) there are weaknesses in fair lending related compliance management systems.

The Bureau also continued to vigorously enforce Federal fair lending laws, including ECOA and HMDA. One key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining.

5. Fair Lending Supervision

One of the Bureau's consumer protection tools is its supervisory examinations. The Bureau's fair lending supervision program assesses compliance with ECOA and HMDA at banks and nonbanks over which the Bureau has supervisory authority. Supervision activities in 2018 ranged from assessments of institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers. As part of its fair lending supervision program, the Bureau conducted three types of fair lending reviews: ECOA baseline reviews, ECOA targeted reviews, and HMDA data integrity reviews.

As a general matter, if such a review finds that an institution's fair lending compliance is inadequate or creates fair lending risk, the Bureau communicates its supervisory recommendations to the institution to help the institution consider fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business.[28] In circumstances where examinations identify violations of fair lending laws, institutions may be required to provide remediation and restitution to consumers, along with other appropriate relief. In accordance with law, the Bureau is mandated to refer matters to the Justice Department when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[29] The Bureau also may refer other potential ECOA violations to the Justice Department, at its discretion.[30]

5.1.1 Fair Lending Supervisory Developments

The Bureau published various supervision program developments related to fair lending in the Summer 2018 edition of *Supervisory Highlights*. Those developments are also summarized below.[31]

5.1.2 HMDA Implementation and New Data Submission Platform

The Summer 2018 edition of *Supervisory Highlights*[32] noted its prior statement regarding HMDA implementation and discussed updates to HMDA related to the enactment of the EGRRCPA.

On December 21, 2017, the Bureau issued a public statement regarding HMDA implementation.[33] The statement indicated that, ''for HMDA data collected in 2018 and reported in 2019 the Bureau does not intend to require data resubmission unless data errors are material. Furthermore, the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019.'' The Bureau further indicated that examinations of 2018 HMDA data would be diagnostic in nature, serving to help institutions identify compliance weakness and crediting good faith efforts.[34] The statement also noted that the Bureau ''intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule such as the institutional and transactional coverage tests and the rule's discretionary data points.''[35]

In January 2018, the Bureau launched a new HMDA Platform to collect and publish HMDA data. The HMDA Platform is operated by the Bureau on behalf of the members of the Federal Financial Institutions Examination Council (FFIEC) and the Department of Housing and Urban Development. The new platform modernizes the HMDA collection process, and aims to reduce the time to deliver HMDA data to the public. New capabilities will continue to be added to this platform, including a forthcoming publication query tool and Application Programming Interface (API) that will replace the previous API.

The previous Bureau HMDA Explorer and API that are scheduled to be retired had been designed to support a previous generation of HMDA data and were not able to accommodate the expanded data points in the 2018 collection that were added pursuant to the 2015 HMDA Rule. The tool had not had any major updates since its release in 2013. In order to prepare for the retirement of the old site, the Bureau conducted a number of interviews with community groups and HMDA stakeholders over last summer to develop a new set of requirements based on the needs of data users. The new query tool, HMDA Data Browser, will be released late Summer 2019 on the new HMDA Platform.

The Summer 2018 *Supervisory Highlights* also discussed the Bureau's July 5, 2018 public statement regarding recent HMDA amendments under the EGRRCPA. The EGRRCPA provided partial exemptions for some insured depository institutions and insured credit unions from certain HMDA requirements. The Bureau indicated that the EGRRCPA would not affect the format of the HMDA Loan Application Registry (LAR).[36] Institutions that were no longer required to report certain data fields under the EGRRCPA would instead enter an exemption code in the field. On August 31, 2018, the Bureau published an updated Filing Instructions Guide which added exemption codes to the requisite data fields under the EGRRCPA.[37]

More information about the HMDA-related topics discussed this year in *Supervisory Highlights* can be found in Section 3 of this Report.

5.1.3 Small Business Lending Review Procedures

The Summer 2018 edition of *Supervisory Highlights*[38] reported on the Bureau's fair lending work in small

[28] For recent updates to the types of supervisory communications, see *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf.*

[29] 15 U.S.C. 1691e(g).

[30] Id.

[31] Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2018* at 18–20 (September 2018), *https://www.consumerfinance.gov/documents/6817/bcfp_supervisory-highlights_issue-17_2018-09.pdf.*

[32] Id.

[33] CFPB Issues Public Statement on Home Mortgage Disclosure Act Compliance (December 21, 2017), available at *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/.*

[34] Id.

[35] Id.

[36] Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2018* at 19 (September 2018), *https://www.consumerfinance.gov/documents/6817/bcfp_supervisory-highlights_issue-17_2018-09.pdf.*

[37] Filing Instructions Guide for HMDA Data Collected in 2018 (August 2018), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2018-hmda-fig-2018-hmda-rule.pdf.*

[38] Id. at 20–21.

business lending where the Bureau seeks to ensure that creditors do not discriminate on any prohibited bases. The *Supervisory Highlights* discussed the procedures and methodologies used as part of the Bureau's small business examination process.

Each ECOA small business lending review includes a fair lending assessment of the institution's Compliance Management System (CMS) related to small business lending. To conduct this portion of the review, examinations use Module II of the ECOA Baseline Review Modules.[39] CMS reviews include assessments of the institution's board and management oversight, compliance program (policies and procedures, training, monitoring and/or audit, and complaint response), and service provider oversight.

Examinations also use the Interagency Fair Lending Examination Procedures, which have been adopted in the Bureau's Supervision and Examination Manual. In some ECOA small business lending reviews, examination teams may evaluate an institution's fair lending risks and controls related to origination or pricing of small business lending products. Some reviews may include a geographic distribution analysis of small business loan applications, originations, loan officers, or marketing and outreach, in order to assess potential redlining risk.

As with other in-depth ECOA reviews, ECOA small business lending reviews may include statistical analysis of lending data in order to identify fair lending risks and appropriate areas of focus during the examination. Notably, statistical analysis is only one factor taken into account by examination teams that review small business lending for ECOA compliance. Reviews typically include other methodologies to assess compliance, including policy and procedure reviews, interviews with management and staff, and reviews of individual loan files.

6.0 Fair Lending Enforcement

In addition to supervision, the Bureau's enforcement function is another tool to protect consumers. The Bureau conducts investigations of potential violations of HMDA and ECOA, and if it believes a violation has occurred, can file a complaint either through its administrative enforcement process or in federal court. In 2018, the Bureau opened and continued a number of fair-lending-related investigations, however, it did not bring fair lending-related enforcement actions.

The Bureau refers matters with ECOA violations to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[40] A referral does not prevent the Bureau from taking its own independent action to address a violation.

6.1 Implementing Enforcement Orders

When an enforcement action is resolved through a public enforcement order, the Bureau (together with the Justice Department, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. As appropriate to the specific requirements of individual public enforcement orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system. Throughout 2018, the Bureau worked to implement and oversee compliance with the pending public enforcement orders that were entered by federal courts or issued by the Bureau's Director in prior years.

6.1.1 Settlement Administration

Bancorp South Bank

On June 25, 2018 participation materials were mailed to potentially eligible African-American borrowers identified as harmed by Bancorp South's alleged redlining discrimination in mortgage lending between 2011 and 2015 notifying them how to participate in the settlement, resulting from a 2016 enforcement action brought by the Bureau and Justice Department against Bancorp South for alleged redlining and pricing discrimination in mortgage lending.[41]

Fifth Third Bank

On December 17, 2018, participating African-American and Hispanic borrowers, whom Fifth Third overcharged for their auto loans, were mailed checks totaling $12 million, plus accrued interest, resulting from a 2015 enforcement action brought by the Bureau and the Justice Department against Fifth Third for alleged discrimination in auto lending.[42]

Honda Finance

In 2018 the Bureau conducted activity following the 2015 enforcement action against Honda Finance. By way of background, on July 14, 2015, working in close coordination with the DOJ, the Bureau ordered American Honda Finance Corporation (Honda Finance) to pay $24 million in damages to harmed African-American, Hispanic, and Asian or Pacific Islander borrowers. On October 2, 2017, participating African-American, Hispanic, and Asian and/or Pacific Islander borrowers, whom Honda Finance overcharged for their auto loans were mailed checks compensating them for their harm. During 2018, the administration of the settlement consisted largely of monitoring consumer responses, check cashing rates and following up with respect to uncashed checks to determine better ways to contact eligible consumers and encourage check cashing.

Provident Funding Associates

In 2018 the Bureau completed its work implementing the consumer redress provisions of the consent order in the Provident Funding Associates (Provident) matter. Working jointly with DOJ, the agencies filed a complaint on May 28, 2015 alleging that Provident unlawfully discriminated against African-American and Hispanic borrowers by overcharging them on their mortgage loans. The consent order required that Provident pay $9 million in restitution. On November 2, 2017, participating African-American and Hispanic borrowers who were unlawfully overcharged on their mortgage loans were mailed checks. On November 6, 2018, the Bureau completed the process for the mailing of remuneration checks, totaling $9 million, plus accrued interest, to eligible borrowers.[43]

6.1.2 ECOA Referrals to the Department of Justice

The Bureau must refer to the Justice Department (DOJ) a matter when it has

[39] Equal Credit Opportunity Act (ECOA) Baseline Review Procedures (April 2019), *https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/equal-credit-opportunity-act-ecoa-baseline-review-procedures/.*

[40] 15 U.S.C. 1691e(g).

[41] Consent Order, *United States of America and Consumer Financial Protection Bureau* v. *Bancorp South Bank,* CFPB No. 1:16cv118 (July 25, 2016) *https://www.consumerfinance.gov/documents/519/201606_cfpb_bancorpSouth-consent-order.pdf.*

[42] Consent Order, In re Fifth Third Bank, CFPB No. 2015–CFPB–0024 (Sept. 28, 2015), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/.*

[43] Patrice Alexander Ficklin, *African-American and Hispanic borrowers harmed by Provident will receive $9 million in compensation,* Consumer Financial Protection Bureau (Nov. 2, 2017), *https://www.consumerfinance.gov/about-us/blog/african-american-and-hispanic-borrowers-harmed-provident-will-receive-9-million-compensation/.*

reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[44] The Bureau also may refer other potential ECOA violations to the DOJ.[45] In 2018, the Bureau did not refer any ECOA violations to the Justice Department.

6.1.3 Pending Fair Lending Investigations

In 2018, the Bureau had a number of ongoing fair lending investigations of institutions involving a variety of consumer financial products. One key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. At the end of 2018, the Bureau had a number of pending investigations in this and other areas.

7.0 Interagency Coordination

7.1 Interagency Coordination and Engagement

In 2018, the Office of Fair Lending coordinated the Bureau's fair lending regulatory, supervisory, and enforcement activities with those of other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws.[46] This interagency engagement seeks to address current and emerging fair lending risks.

The Bureau, along with the Federal Trade Commission (FTC), Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), Department of Justice (DOJ), and the Federal Housing Finance Agency (FHFA), comprise the *Interagency Task Force on Fair Lending.*[47] The Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

The Bureau also belongs to a standing working group of federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. These agencies constitute the *Interagency Working Group on Fair Lending Enforcement.* The agencies use these meetings to discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts. In addition to these interagency working groups, we meet periodically and on an ad hoc basis with the Justice Department and prudential regulators to coordinate the Bureau's fair lending work.

In 2018, the Bureau chaired the *FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee,* a subcommittee of the FFIEC Task Force on Consumer Compliance (Task Force), that oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the Task Force.

8. Interagency Reporting on ECOA and HMDA

The law requires the Bureau to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[48] In addition, the Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[49]

8.1 Reporting on ECOA Enforcement

The enforcement efforts and compliance assessments made by all the agencies assigned enforcement authority under Section 704 of ECOA are discussed in this section.

8.2 Public Enforcement Actions

The agencies charged with administrative enforcement of ECOA under Section 704 are as follows:

1. CFPB;

2. Federal Deposit Insurance Corporation (FDIC);

3. Federal Reserve Board (FRB);

4. National Credit Union Administration (NCUA);

5. Office of the Comptroller of the Currency (OCC);[50]

6. Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA),[51]

7. Department of Transportation (DOT);

8. Farm Credit Administration (FCA);

9. Federal Trade Commission (FTC);

10. Securities and Exchange Commission (SEC); and

11. Small Business Administration (SBA).[52]

In 2018, none of the eleven ECOA enforcement agencies brought public enforcement actions for violations of ECOA.

Below is an overview of the year-to-year ECOA enforcement actions since 2012:

Reporting year	Total enforcement matters
2012	1
2013	26
2014	2
2015	5
2016	3
2017	1
2018	0

8.1.2 Violations Cited During ECOA Examinations

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently-cited violations were as follows:

[44] 15 U.S.C. 1691e(g).

[45] Id.

[46] Dodd-Frank Act section 1013(c)(2)(B) (codified at 12 U.S.C. 5493(c)(2)(B)).

[47] In early 2019, the Bureau assumed the role of chairing the Task Force.

[48] 15 U.S.C. 1691f.

[49] 12 U.S.C. 2807.

[50] Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (the Bureau) comprise the FFIEC. The FFIEC is a ''formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions'' by the member agencies listed above and the State Liaison Committee ''and to make recommendations to promote uniformity in the supervision of financial institutions.'' Federal Financial Institutions Examination Council, *http://www.ffiec.gov* (last visited April 5, 2018). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

[51] The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

[52] 15 U.S.C. 1691c.

TABLE 1—REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES: 2018

FFIEC agencies reporting	Regulation B violations: 2018
The Bureau, FDIC, FRB, NCUA, OCC	12 CFR 1002.4(a): Discrimination on a prohibited basis in a credit transaction. 12 CFR 1002.9(a)(1), (a)(2), (b)(2), (c): Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken. 12 CFR 1002.14(a)(2): Failure to routinely provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling.

TABLE 2—REGULATION B VIOLATIONS CITED BY OTHER ECOA AGENCIES: 2017

Other ECOA agencies	Regulation B violations: 2018
FCA	12 CFR 1002.9(a)(1)(i), (a)(2)(i), (b)(1): Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; failure to provide ECOA notice. 12 CFR 1002.13: Failure to request and collect information for monitoring purposes.

The AMS, SEC and the SBA reported that they received no complaints based on ECOA or Regulation B in 2018. In 2018, the DOT reported that it received a ''small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA,'' which it ''processed informally.'' The FTC is an enforcement agency and does not conduct compliance examinations.

8.2 Referrals to the Department of Justice

In 2018, one FFIEC agency, the NCUA, made a referral to the DOJ involving discrimination in violation of ECOA. The NCUA made its referral on the basis of marital status discrimination.

Below is a year-to-year overview of ECOA referrals to DOJ:

Year	Number of referrals
2012	12
2013	24
2014	18
2015	16
2016	20
2017	11
2018	1

8.3 Reporting on the Home Mortgage Disclosure Act

The Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[53] The Bureau, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

APPENDIX A: DEFINED TERMS

Term	Definition
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture.
Bureau	The Bureau of Consumer Financial Protection.
CMS	Compliance Management System.
Dodd-Frank Act	The Dodd-Frank Wall Street Reform and Consumer Protection Act.
DOJ	The U.S. Department of Justice.
DOT	The U.S. Department of Transportation.
ECOA	The Equal Credit Opportunity Act.
EGRRCPA	Economic Growth, Regulatory Relief, and Consumer Protection Act.
FCA	Farm Credit Administration.
FDIC	Federal Deposit Insurance Corporation.
Federal Reserve Board or FRB	Board of Governors of the Federal Reserve System.

[53] *See* 12 U.S.C. 2807.

APPENDIX A: DEFINED TERMS—Continued

Term	Definition
FFIEC	Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (The Bureau). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FTC	Federal Trade Commission.
GIPSA	Grain Inspection, Packers and Stockyards Administration of the U.S. Department of Agriculture.
HMDA	The Home Mortgage Disclosure Act.
HUD	The U.S. Department of Housing and Urban Development.
NCUA	The National Credit Union Administration.
OCC	Office of the Comptroller of the Currency.
SBA	Small Business Administration.
SEC	Securities and Exchange Commission.
USDA	U.S. Department of Agriculture.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–14384 Filed 7–5–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Military Family Readiness Council Member Solicitation

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee member solicitation.

SUMMARY: The DoD announces the following Federal Advisory Committee member solicitation for the Department of Defense Military Family Readiness Council (MFRC).

FOR FURTHER INFORMATION CONTACT: William Story, (571) 372–5345 (Voice), (571) 372–0884 (Facsimile), OSD Pentagon OUSD P–R Mailbox Family Readiness Council, *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* (Email). Mailing address is: Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), Office of Family Readiness Policy, 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. A copy of this solicitation notice will be posted on the MFRC website: *https://www.militaryonesource.mil/leaders-service-providers/military-family-readiness-council.*

SUPPLEMENTARY INFORMATION: Consistent with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the DoD announces the following Federal Advisory Committee member solicitation for the MFRC. The duties of the MFRC are specified in 10 U.S.C. 1781a(d). The MFRC consists of 18 members, and 3 members are appointed from among representatives of military family organizations, including military family organizations of families of members of the regular components, and of families of members of the reserve components. It is these three positions that the DoD is soliciting nominations.

Forward Nominations for Membership: This notice is a solicitation to fill the three military family organization vacancies on the MFRC. To be considered for nomination, please forward a biography of the nominee describing the professional background and qualifications meeting the above stated criteria. Include a separate detailed description of the nominee's military family organization, its purpose and goals, its programs and work concerning military families, membership size and makeup (officer, enlisted, reserve, guard, both), and recent initiatives.

Submissions may be by email: *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* or by FAX (571) 372–0884 to the MFRC's Designated Federal Officer no later than 11:59 p.m. EST Friday, July 26, 2019.

Note: Nominees must be U.S. citizens and cannot be registered federal lobbyists. Individuals appointed by the Secretary of Defense to serve on the MFRC will be appointed as experts and consultants under the authority of 5 U.S.C. 3109 to serve as special governmental employee members and will be required to comply with all DoD ethics requirements. Nominees must pass a security background check. In addition, those appointed will serve without compensation except for travel and per diem in conjunction with official MFRC business.

Dated: July 2, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–14430 Filed 7–5–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0083]

Proposed Collection; Comment Request

AGENCY: Office of the DoD Chief Information Officer, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the DoD Chief Information Officer announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 6, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to DoD's DIB Cybersecurity Activities Office ATTN: Zachary Gifford 1550 Crystal Dr., Suite 1000–A, Arlington, VA 22202 or call (703) 604–3167, toll free (855) 363–4227.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD's Defense Industrial Base (DIB) Cybersecurity (CS) Activities Cyber Incident Reporting; OMB Control Number 0704–0489.

Needs and Uses: The information collection requirement is necessary to support mandatory cyber incident reporting requirements under 10 U.S.C. Section 393 (formerly Pub. L. 112–239, National Defense Authorization Act for Fiscal Year 2013, Section 941, Reports to Department of Defense on penetrations of networks and information systems of certain contractors) and 10 U.S.C. Section 391 (formerly Pub. L. 113–58, National Defense Authorization Act for Fiscal Year 2015, Section 1632, Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors).

Affected Public: Business or other for-profit and not for profit institutions.

Annual Burden Hours: 350,000.

Number of Respondents: 10,000.

Responses per Respondent: 5.

Annual Responses: 50,000.

Average Burden per Response: 7 hours.

Frequency: On occasion.

Dated: July 2, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–14440 Filed 7–5–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Announcement of a Closed Teleconference Meeting

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Announcement of a closed teleconference meeting.

SUMMARY: This notice sets forth the agenda for a July 19, 2019 closed teleconference meeting of the National Assessment Governing Board (hereafter referred to as Governing Board). This notice provides information to members of the public who may be interested in reviewing the closed meeting report of the meeting 10 working days following the meeting. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

DATES: July 19, 2019 from 2:00 p.m. to 3:30 p.m. Eastern Standard Time.

ADDRESSES: Teleconference meeting.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279. The Governing Board is established to formulate policy for NAEP administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, improving the form and use of NAEP, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

The funding cycle limitation require the Governing Board to amend the NAEP Assessment Schedule, adopted during the May 2019 quarterly board meeting. The Governing Board action on updating the NAEP Assessment Schedule, given information confirmed through the contract process, cannot occur until the expected contract award date.

The Governing Board recently received confirmation from the National Center for Education Statistics (NCES) that its decision for the NAEP Alliance Contracts, expected to be awarded by early July 2019, include unanticipated changes to actual and future expected costs for the NAEP Assessment Schedule, which is established by the Governing Board.

July 19, 2019 Full Board Teleconference Meeting

On Friday, July 19, 2019, the Governing Board will convene in closed session from 2:00 p.m. to 3:30 p.m. Eastern Time. During the closed session, the Governing Board will receive a briefing from Peggy Carr, Associate Commissioner, NCES, on the detailed program costs through the year 2030, and the contract award amounts for activities through FY 2025, contract options costs, and Independent Government Costs Estimates (IGCE) for future assessment years. The Governing Board must consider the IGCEs as it revises the NAEP Assessment Schedule through 2030 to account for anticipated costs and budget constraints. Therefore, during closed session, the Governing Board will need to deliberate on estimated future cost details of the NAEP Schedule of Assessments and will take action on revising the Schedule of Assessments based on the outcome of the Board's deliberations. Public disclosure of independent government cost estimates for future contract costs and internal NAEP budget decisions would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of § 552b(c) of Title 5 of the United States Code.

The July 19, 2019 teleconference meeting will adjourn at 3:30 p.m.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* no later than August 2, 2019, by 10:00 a.m. EST.

Reasonable Accommodations: The NAGB website is accessible to individuals with disabilities. Written comments may be submitted electronically or in hard copy to the attention of the Executive Officer/Designated Federal Official (see contact information noted above). Information on the Governing Board and its work can be found at *www.nagb.gov.*

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available

via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Lisa M. Stooksberry,

Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2019–14405 Filed 7–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Applications for New Awards; Gaining Early Awareness and Readiness for Undergraduate Programs (State Grants)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) State Grants, Catalog of Federal Domestic Assistance (CFDA) number 84.334S. This notice relates to the approved information collection under OMB control number 1840–0821, Application for GEAR UP State Grants.

DATES:

Applications Available: July 8, 2019.

Deadline for Transmittal of Applications: August 7, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (83 FR 6003), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Craig Pooler, U.S. Department of Education, 400 Maryland Avenue SW, Room 278–64, Washington, DC 20202–6450. Telephone: (202) 453–6195. Email: *Craig.Pooler@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Purpose of Program: The GEAR UP program is a discretionary grant program that encourages eligible entities to provide support, and maintain a commitment to eligible low-income students, including students with disabilities, to assist the students in obtaining a secondary school diploma (or its recognized equivalent) and to prepare for and succeed in postsecondary education. Under the GEAR UP program, the Department awards grants to two types of entities: (1) States and (2) eligible partnerships.

In this notice, the Department invites applications for State grants only. Required services under the GEAR UP program are specified in sections 404D(a) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–24(a)), and permissible services under the GEAR UP program are specified in section 404D(b) and (c) of the HEA (20 U.S.C. 1070a–24(b) and (c)). Grantee activities must include providing financial aid information for postsecondary education, encouraging enrollment in rigorous and challenging coursework in order to reduce the need for remediation at the postsecondary level, implementing activities to improve the number of participating students who obtain a secondary school diploma and who complete applications for and enroll in a program of postsecondary education, and providing scholarships as specified in section 404E of the HEA. Additional permissible activities for State grantees are specified in sections 404D(b) and (c) of the HEA.

Background: On March 2, 2018, the Secretary published in the **Federal Register** the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (83 FR 9096) (Supplemental Priorities). In order to advance the Secretary's priorities, this competition contains a competitive preference priority that focuses on improving student achievement or other educational outcomes in science, technology, engineering, or mathematics (STEM), including computer science. In addition, consistent with the Administration's interest in allocating funding to evidence-based practices, this competition includes a competitive preference priority that encourages applicants to propose strategies that are supported by promising evidence.

Priorities: This notice contains three competitive preference priorities and one invitational priority. Competitive Preference Priority 1 is from the Supplemental Priorities. In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), Competitive Preference Priority 2 is from section 404A(b)(3) of the HEA (20 U.S.C. 1070a-21(b)(3)) and the GEAR UP program regulations (34 CFR 694.19). Competitive Preference Priority 3 is from 34 CFR 75.226.

Competitive Preference Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional two points to an application, depending on how well the application meets each of these competitive preference priorities, for a maximum of six additional points.

These priorities are:

Competitive Preference Priority 1—Promoting STEM Education, With a Particular Focus on Computer Science (Up to two points).

Projects designed to improve student achievement or other educational outcomes in science, technology, engineering, math, or computer science (as defined in this notice). These projects must address creating or expanding partnerships between schools, local educational agencies, State educational agencies, businesses, not-for-profit organizations, or institutions of higher education (IHEs) to give students access to internships, apprenticeships, or other work-based learning experiences in STEM fields, including computer science.

Competitive Preference Priority 2 (Up to two points).

We give priority to an eligible applicant for a State GEAR UP grant that has: (a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcomes data) submitted by the applicant as part of its annual and final performance reports from prior GEAR UP State grants administered by the applicant and the applicant's history of compliance with applicable statutory and regulatory requirements; and (b) a prior demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Competitive Preference Priority 3 (Up to two points).

Applications supported by evidence that meets the definition of ''promising evidence'' in 34 CFR 77.1(c).

Note 1: To address the priority, for up to two authorized activities, an applicant may submit one study or What Works Clearinghouse (WWC) publication that it believes supports the implementation of the proposed activity and that meets the promising evidence standard. Non-Federal peer reviewers will evaluate studies cited by the applicants to determine if they meet the requirements for promising evidence, as well as whether they are sufficiently aligned with (relevant to) the proposed activity. Applicants will be awarded one point for each activity supported by a relevant citation that meets the promising evidence standard, for a maximum number of two points.

Cited studies may include both those already listed in the Department's WWC Database of Individual Studies (see *https://ies.ed.gov/ncee/wwc/StudyFindings*) and those that have not yet been reviewed by the WWC. Studies listed in the WWC Database of Individual Studies do not necessarily satisfy any or all of the criteria needed to meet the promising evidence standard. Therefore, it is important that applicants themselves ascertain the suitability of the study for the evidence priority. Any proposed studies must be cited in the section of the application that addresses Competitive Preference Priority 3.

Note 2: As they consider the activities, they propose to implement in their GEAR UP projects and how to respond to this competitive preference priority, we encourage applicants to review research related to authorized GEAR UP activities to identify evidence that meets the promising evidence standard.

For State grantees, required GEAR UP services are specified in sections 404D(a) of the HEA (20 U.S.C. 1070a–24(a)), and permissible services under the GEAR UP program are specified in section 404D(b) and (c) of the HEA (20 U.S.C. 1070a–24(b) and (c)).

Invitational Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Spurring Investment in Qualified Opportunity Zones.

Under this priority, an applicant must demonstrate one or more of the following:

(a) The area in which the applicant proposes to serve individuals or otherwise provide services overlaps with a Qualified Opportunity Zone, as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115–97). An applicant must—

(i) Provide the census tract number of the Qualified Opportunity Zone(s) in which it proposes to serve individuals or otherwise provide services; and

(ii) Describe how the applicant will serve individuals or otherwise provide services in the Qualified Opportunity Zone(s).

(b) The applicant is located in a Qualified Opportunity Zone. The applicant must provide the census tract number of the Qualified Opportunity Zone in which it is located. If the applicant has multiple locations, or if the applicant's location overlaps with a Qualified Opportunity Zone, the applicant must demonstrate that its proximity to a Qualified Opportunity Zone is critical to the proposed project.

(c) The applicant has received, or will receive by 30 days after being awarded a grant, financial assistance from a Qualified Opportunity Fund under section 1400Z–2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act, for the acquisition, construction, or renovation of real or other tangible property directly related to its proposed project. An applicant must—

(i) Identify the Qualified Opportunity Fund from which it has received or will receive financial assistance; and

(ii) Describe how the applicant will use the financial assistance for its proposed project.

Definitions: These definitions are from the Supplemental Priorities and 34 CFR 77.1(c).

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for

English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Program Authority: 20 U.S.C. 1070a–21–1070a–28.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 694.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Department of Education Appropriations Act, 2019 provided $360,000,000 for the GEAR UP program for FY 2019, of which we intend to use an estimated $28,276,000 for new GEAR UP State awards.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $2,500,000–$5,000,000.

Estimated Average Size of Awards: $3,535,000.

Maximum Award: We will not make an award for a State grant exceeding $5,000,000 for a single budget period of 12 months. Additionally, no funding will be awarded for increases in budget after the first 12-month budget period. As described in 34 CFR 694.1, the Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Either 72 months or 84 months.

Note: An applicant that wishes to seek funding for a seventh project year (*i.e.,* for a project period of 84 months), in order to provide project services to GEAR UP students through their first year of attendance at an IHE, must propose to do so in the application provided in response to this notice.

III. Eligibility Information

1. *Eligible Applicants:* States (as defined in section 103(20) of the HEA (20 U.S.C. 1003(20)), which includes the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. Per Congressional direction in the Explanatory Statement to the Department of Education Appropriations Act, 2019 (Pub. L. 115–245), only States without an active State GEAR UP grant, or States that have an active State GEAR UP grant that is scheduled to end prior to October 1, 2019, are eligible to receive a new State GEAR UP award in this competition.

2.a. *Cost Sharing or Matching:* Section 404C(b)(1) of the HEA (20 U.S.C. 1070a–23(b)(1)) requires grantees under this program to provide from State, local, institutional, or private funds, not less than 50 percent of the cost of the program (or one dollar of non-Federal funds for every one dollar of Federal funds awarded), which may be provided in cash or in-kind. The provision also specifies that the match may be accrued over the full duration of the grant award period, except that the grantee must make substantial progress towards meeting the matching requirement in each year of the grant award period.

Section 404C(c) of the HEA provides that in-kind contributions may include (1) the amount of the financial assistance obligated under GEAR UP to students from State, local, institutional, or private funds, (2) the amount of tuition, fees, room or board waived or reduced for recipients of financial assistance under GEAR UP, (3) the amount expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of non-school organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit and philanthropic organizations, and other organizations, and (4) equipment and supplies, cash contributions from non-Federal sources, transportation expenses, in-kind or discounted program services, indirect costs, and facility usage.

Grantees must include a budget detailing the source of the matching funds and must provide an outline of the types of matching contributions for at least the first year of the grant in their grant applications. Consistent with 2 CFR 200.306(b), any matching funds must be an allowable use of funds consistent with the GEAR UP program requirements and the cost principles detailed in subpart E of 2 CFR part 200, and not included as a contribution for any other Federal award.

b. *Supplement-Not-Supplant:* This program involves supplement, not supplant funding requirements. Under

section 404B(e) of the HEA (20 U.S.C. 1070a–22(e)), grant funds awarded under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this program.

3. *General Application Requirements:* All applicants must meet the following application requirements in order to be considered for funding. The application requirements are from section 404C(a) of the HEA (20 U.S.C. 1070a–23(a)).

In order for an eligible entity to qualify for a grant under the GEAR UP program, the eligible entity shall submit to the Secretary an application for carrying out a GEAR UP program that—

(a) Describes the activities for which assistance under this program is sought, including how the eligible entity will carry out the required activities described in section 404D(a) of the HEA;

(b) Describes, in the case of an eligible entity described in section 404A(c)(1) of the HEA, how the eligible entity will meet the requirements of section 404E of the HEA;

(c) Provides assurances that adequate administrative and support staff will be responsible for coordinating the activities described in section 404D of the HEA;

(d) Provides assurances that activities assisted under this program will not displace an employee or eliminate a position at a school assisted under this program, including a partial displacement such as a reduction in hours, wages, or employment benefits;

(e) Describes, in the case of an eligible entity described in section 404A(c)(1) of the HEA that chooses to use a cohort approach, how the eligible entity will define the cohorts of the students served by the eligible entity pursuant to section 404B(d) of the HEA, and how the eligible entity will serve the cohorts through grade 12, including—

(i) How vacancies in the program under this program will be filled; and

(ii) How the eligible entity will serve students attending different secondary schools;

(f) Describes how the eligible entity will coordinate programs under this program with other existing Federal, State, or local programs to avoid duplication and maximize the number of students served;

(g) Provides such additional assurances as the Secretary determines necessary to ensure compliance with the requirements of this program;

(h) Provides information about the activities that will be carried out by the eligible entity to support systemic changes from which future cohorts of students will benefit; and

(i) Describes the sources of matching funds that will enable the eligible entity to meet the matching requirement described in section 404C(b).

4. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (83 FR 6003), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2019.

3. *Funding Restrictions:* We specify unallowable costs in subpart E of 2 CFR part 200. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Under HEA section 404E(b)(1), a State must use not less than 25 percent and not more than 50 percent of the grant funds for GEAR UP project activities described in HEA section 404D,[1] with the remainder of grant funds spent on scholarships to eligible GEAR UP students described in HEA section 404E. However, HEA section 404E(b)(2) permits the Secretary to allow a State to use more than 50 percent of grant funds received under this program for GEAR UP project activities described in HEA section 404D if the State demonstrates that it has another means of providing eligible GEAR UP students with the financial assistance described in HEA section 404E and describes such means in the State's application.

4. *Recommended Page Limit and Format:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to assess your application. There is no page limit for the application narrative; however, we recommend no more than 50 pages, and that you present your information clearly and concisely. Include your complete response to the selection criteria, the invitational priority, and Competitive Preference Priority 1 in the application narrative. Include your complete response to Competitive Preference Priority 2 on the Project Profile Form, which can be found in the information collection under OMB control number 1840–0821. Include your response to Competitive Preference Priority 3 on the Evidence Form (OMB 1894–0001), which can also be found in the information collection under OMB control number 1840–0821.

Note: Applications that do not follow the formatting recommendations will not be penalized.

We recommend the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins.
- Double-space all text in the application narrative and single-space titles, headings, footnotes, quotations, references, and captions.
- Use a 12-point font.
- Use an easily readable font such as Times New Roman, Courier, Courier New, or Arial.

Other requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and section 404D(a) of the HEA.

a. *Need for the project (15 points).*

(i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers:

(A) The magnitude or severity of the problem to be addressed by the proposed project (up to 8 points); and

(B) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses (up to 7 points).

b. *Quality of project design (25 points).*

(i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 10 points); and

[1] Excluding the provision of funds for postsecondary scholarships required by HEA section 404D(a)(4).

(B) The extent to which the proposed project demonstrates a rationale (as defined in this notice)(up to 15).

c. *Quality of project services (15 points).*

(i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 5 points).

(iii) In addition, the Secretary considers:

(A) The extent to which the project services are likely to provide comprehensive mentoring, outreach, and supportive services to students, including the following activities: information regarding financial aid for postsecondary education to participating students, encouraging student enrollment in rigorous and challenging curricula and coursework in order to reduce the need for remedial coursework at the postsecondary level, and improving the number of participating students who obtain a secondary school diploma and complete applications for and enroll in a program of postsecondary education (up to 5 points); and

(B) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services (up to 5 points).

d. *Quality of project personnel (10 points).*

(i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (up to 2 points).

(iii) In addition, the Secretary considers:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator (up to 4 points); and

(B) The qualifications, including relevant training and experience, of key personnel (up to 4 points).

e. *Quality of the management plan (10 points).*

(i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 4 points);

(B) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project (up to 2 points);

(C) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 2 points); and

(D) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate (up to 2 points).

f. *Quality of the project evaluation (10 points).*

(i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the project evaluation, the Secretary considers:

(A) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (up to 4 points);

(B) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes (up to 4 points); and

(C) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings (up to 2 points).

g. *Adequacy of resources (15 points).*

(i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers:

(A) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project (up to 5 points);

(B) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (up to 5 points); and

(C) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support (up to 5 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 75.217(d)(3), as required by 20 U.S.C. 1070–a23(d). The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process.

If there are insufficient funds for all applications with the same total scores, the Secretary will, to the extent practicable, consider the distribution of grant awards based on the geographic distribution of such grant awards and the distribution between urban and rural applicants for the GEAR UP program consistent with 20 U.S.C. 1070a-22(a)(3).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not

fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20(c).

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The objectives of the GEAR UP program are (1) to increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase education expectations for participating students and increase student and family knowledge of postsecondary education options, preparation, and financing.

The effectiveness of this program depends on the rate at which program participants complete high school and enroll in and complete a postsecondary education. Under the Government Performance and Results Act of 1993 (GPRA), we developed the following performance measures to track progress toward achieving the program's goals:

1. The percentage of GEAR UP students who pass Pre-Algebra or its equivalent by the end of eighth grade.

2. The percentage of GEAR UP students who pass Algebra 1 or its equivalent by the end of ninth grade.

3. The percentage of GEAR UP students who graduate from high school.

4. The percentage of GEAR UP students who complete the Free Application for Federal Student Aid.

5. The percentage of GEAR UP students and former GEAR UP students who are enrolled at an IHE.

6. The percentage of GEAR UP students who place into college-level math and English without need for remediation.

7. The percentage of current GEAR UP students and former GEAR UP students who enrolled at an IHE and persisted to the second year of postsecondary education at the initial or a subsequent IHE.

In addition, to assess the efficiency of the program, we track the average cost, in Federal funds, of achieving a successful outcome, where success is defined as enrollment in a program of undergraduate instruction at an IHE of GEAR UP students immediately after high school graduation. These performance measures constitute GEAR UP's indicators of the success of the program. Accordingly, we require that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Diane Auer Jones,

Principal Deputy Under Secretary.

[FR Doc. 2019–14370 Filed 7–5–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[EERE–2019–BT–PET–0019]

Energy Efficiency Program for Industrial Equipment: Petition of North Carolina Advanced Energy Corporation Efficiency Verification Services for Classification as a Nationally Recognized Certification Program for Electric Motors and Small Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition and request for public comments.

SUMMARY: This notice announces receipt of a petition from North Carolina Advanced Energy Corporation Efficiency Verification Services seeking classification as a nationally recognized certification program. The petition, which appears at the end of this notice, includes documentation to help substantiate company's position that its certification program for electric motors and small electric motors satisfies the evaluation criteria for classification as a nationally recognized certification program. This notice summarizes the substantive aspects of these documents and requests public comments on the merits of the petition.

DATES: DOE will accept comments, data, and information with respect to the Advanced Energy Petition until August 7, 2019.

ADDRESSES: You may submit comments, identified by docket number ''EERE–2019–BT–PET–0019,'' by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: AdvEnergyElecMotorsPet2019PET0019@ee.doe.gov Include the docket number and/or RIN in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting written comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW, Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or to request a public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Part C of Title III of the Energy Policy and Conservation Act contains energy conservation requirements for, among other things, electric motors and small electric motors, including test procedures, energy efficiency standards, and compliance certification requirements. 42 U.S.C. 6311–6316.[1] Section 345(c) of EPCA directs the Secretary of Energy to require manufacturers of electric motors ''to certify through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c). The United States Department of Energy (''DOE'' or, in context, ''the Department'') codified this requirement at 10 CFR 431.17(a)(5). DOE also established certain compliance testing requirements for manufacturers of small electric motors. 77 FR 26608 (May 4, 2012) Manufacturers of small electric motors have the option of self-certifying the efficiency of their small electric motor using a certification program nationally recognized in the U.S to certify the efficiency of these motors. (10 CFR 431.445) DOE developed a regulatory process for the recognition, and withdrawal of recognition, for certification programs nationally recognized in the U.S. The criteria and procedures for national recognition of an energy efficiency certification program for electric motors are codified at 10 CFR 431.20—10 CFR 431.21 for electric motors and at 10 CFR 431.447—10 CFR 431.448 for small electric motors. Each step of the process and evaluation criteria are discussed below.

For a certification program to be classified by DOE as being nationally recognized in the United States for the testing and certification of electric motors and small electric motors, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with aforementioned sections.

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

For the Department to grant such a petition, the petitioner's certification program must:

(1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity;

(2) Be independent of electric motor and small electric motor manufacturers (as applicable), importers, distributors, private labelers or vendors;

(3) Be qualified to operate a certification system in a highly competent manner; and

(4) Be expert in the following test procedures and methodologies:

(a) For electric motors it must be expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Method B or CSA C390–10. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. (10 CFR 431.20(b)); and

(b) For small electric motors it must be expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Methods A and B, IEEE Std 114–2010, CSA C390–10, and CSA C747, or similar procedures and methodologies for determining the energy efficiency of small electric motors. It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency. (10 CFR 431.447(b))

The petition requesting classification as a nationally recognized certification program must contain a narrative statement explaining why the organization meets the above criteria, be accompanied by documentation that supports the narrative statement, and be signed by an authorized representative. (10 CFR 431.20(c), and 10 CFR 431.447(c)).

II. Discussion

Pursuant to sections 431.20, 431.21, 431.447 and 431.448, on February 11, 2019, North Carolina Advanced Energy Corporation Efficiency Verification Services (''Advanced Energy'') submitted to DOE a Petition for Recognition related to the group's motor efficiency verification services. That petition, titled, ''Energy Efficiency Evaluation of Electric Motors and Small Electric Motors to US Department of Energy Regulations as stipulated in 10 CFR part 431, subpart B and Subpart X'' (''Petition'' or ''Advanced Energy Petition''), was accompanied by a cover letter from Advanced Energy to the Department containing four separate sections including individual narrative statements—(1) Standards and Procedures, (2) Independent Status, (3) Qualification of Advanced Energy to Operate a Certification System, and (4) Expertise in Electric Motor Test Procedures. The petition included supporting documentation on these subjects. The Department is required to publish in the **Federal Register** such petitions for public notice and solicitation of comments, data and information as to whether the Petition should be granted. 10 CFR 431.21(b) and 10 CFR 431.448(b). A copy of Advanced Energy's petition and accompanying cover letter have been placed in the docket.

The Department hereby solicits comments, data and information on whether it should grant the Advanced Energy Petition. 10 CFR 431.21(b) and 10 CFR 431.448(b). Any person submitting written comments to DOE with respect to the Advanced Energy Petition must also, at the same time, send a copy of such comments to Advanced Energy. As provided under §§ 431.21(c) and 431.448(c), Advanced Energy may submit to the Department a written response to any such comments. After receiving any such comments and responses, the Department will issue an interim and then a final determination on the Advanced Energy Petition, in accordance with § 431.21(d) and (e), and § 431.448(d) and (e) of 10 CFR part 431.

In particular, the Department is interested in obtaining comments, data, and information respecting the following evaluation criteria:

(1) Whether Advanced Energy has satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of electric motors and small electric motors continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity. DOE is also interested in obtaining comments as to how rigorously Advanced Energy operates its certification system under the guidelines contained in ISO/IEC Guide 65, General requirements for bodies operating product certification systems.

(2) Whether Advanced Energy is independent of electric motor and small electric motor manufacturers, importers, distributors, private labelers or vendors. To meet this requirement, it cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

(3) Whether Advanced Energy is expert in the content and application of the test procedures and methodologies for both electric motors and small electric motors. Specifically, for electric motors, that Advanced Energy is expert in the content and application of the test procedures and methodologies IEEE Std 112–2004 Test Method B or CSA C390–10. (See 10 CFR 431.20(c)(4)). And, for small electric motors, that Advanced Energy is expert in the content and application of the test procedures and methodologies IEEE Std 112–2004, Test Methods A and B, IEEE Std 114–2010, CSA C390–10, and CSA C747 and with similar procedures and methodologies. (See 10 CFR 431.447(c)(4)).

(4) DOE is also interested in receiving comments on whether Advanced Energy's criteria and procedures are satisfactory for the selection and sampling of electric motors and small electric motors tested for energy efficiency.

Signed in Washington, DC, on June 28, 2019.

Alexander N. Fitzsimmons,

Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Petition for Recognition

Energy Efficiency Evaluation of Electric Motors to United States Department of Energy

Requirements as Documented in 10 CFR part 431—Subpart B and Subpart X

State of NORTH CAROLINA

SS: County of WAKE

Before me, the undersigned notary public, this day, personally, appeared Brian Coble to me known, who being duly sworn according to law, deposes the following:

/s/ Brian Coble Subscribed and sworn to before me this 12 day of February 2019.

/s/ Terri Bowling, Notary Public

Petition for Recognition

Advanced Energy Motor Efficiency Verification Services

Energy Efficiency Evaluation of Electric Motors and Small Electric Motors to US Department of Energy Regulations as stipulated in 10 CFR 431—Subpart B and Subpart X

State: _____

County: _____

Before me the undersigned notary public, this day personally appeared _____

_____who being duly sworn according to law, deposes the following:

On behalf of Advanced Energy

_____ (Signature of Affiant)

Brian Coble, Senior Vice President
Advanced Energy

Subscribed and sworn to before me this ____ ____ day of _____ 20__

My Commission Expires: _____

Contents

1. Program Criteria Narrative

This document is a petition for the recognition, by US Department of Energy (DOE), of North Carolina Advanced Energy Corporation (Advanced Energy) Efficiency Verification Services as a nationally recognized certification program for certifying electric motors to the DOE standards currently in effect in the United States.

North Carolina Advanced Energy Corporation (Advanced Energy) has been operating as an independent electric motor efficiency testing facility since 1989. In 1992 Advanced Energy began working with the U.S. Department of Energy (DOE) and many other public stakeholders in the Notice of Proposed Rule (NOPR) making process for motor efficiency. Our test facility provides motor efficiency testing to various entities, including subcontractors of DOE, motor manufacturers, motor distributors, motor service centers, motor end users, motor inventors and others. Advanced Energy has tested thousands of motors for efficiency.

Below is our summarized responses to each of the four DOE evaluation criteria. Detailed response can be found in subsequent sections of the document.

(1) It must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of electric motor continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity.

Advanced Energy's test lab has been ISO 17025 certified since 1997. ISO 17025 ensures our lab strictly follows standards and adheres to procedures to ensure quality. Our lab has been audited annually by the National Institute of Standards and Technology since 1997. In addition our lab is audited for motor efficiency testing by Asociacion Nacional de Normalizacion y Certification (ANCE). We have other programs and clients in our lab often requiring a review of our records. As a result we are expert in how motor labs should be audited for motor efficiency testing.

Advanced Energy's test lab recently added ISO 17065 for electric motor efficiency certification by the American National Standards Institute (ANSI). ISO 17065 ensures Advanced Energy's has satisfactory standards and procedures for conducting and administering a certification system. Our processes for motor efficiency certification, including periodic follow up activities to assure basic models conform to prescribed efficiency levels, are clearly defined in our required ANSI scheme. As our ANSI scheme represent our services for motor efficiency certification we provide the full scheme in a section marked ''confidential''. As a result of our ISO 17065 certification we have established and registered a mark with the US Patents and Trademark Office (mark is noted on the cover page) and we are capable of issuing a certificate of conformity for electric motor efficiency.

Advanced Energy has well established standards and procedures in place for administering Certification programs. The company currently operates several Certification programs relating to multiple products, such as residential affordable homes, HVAC Contractor systems, Solar Installations and Electric Motor Repair. These are described under item (3) below.

(2) It must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity.

Advanced Energy is 501 (c) 3 corporation chartered in North Carolina by the North Carolina Utilities Commission in 1980, to fulfil the mission for which it was established. Our Board of Directors comprises public members appointed by the sitting Governor and our electric utility members in North Carolina. Advanced Energy is a nonprofit energy services and engineering firm working with electric utilities, government agencies, public and private organizations to provide research, testing, training, consulting and program design services in the residential, commercial and industrial sectors markets. Our vision is to ensure energy is clean, affordable, reliable, efficient, and safe for all people.

While Advanced Energy regularly tests electric motors and small electric motors for all of the client categories noted at the beginning of this narrative, Advanced Energy does not have any affiliation, financial or otherwise with any of its clients. Advanced Energy is solely controlled by its Management and Board of Directors.

(3) It must be qualified to operate a certification system in a highly competent manner.

Advanced Energy has offered accreditation services to the motor repair industry since 2000. Our Proven Efficiency Verification program requires site audits of the motor service center and annual testing to prove motor repair processes are not degrading efficiency. We are also one of four Electrical Apparatus Service Association auditors for the EASA Accreditation program for electric motor repair.

Advanced Energy has operated a HVAC contractor Certification program launched in 2012. Our certification services for HVAC contractors was developed in response to and as a requirement of the Environmental Protection Agency (EPA)'s Energy Star New Homes Program—HQUITO. Our program serves to not only help HVAC contractors become Certified in the ENERGY STAR program, but also supports their growth and success with technical assistance and best-in-class training and resources.

SystemVision™ is an Advanced Energy Certification Program for affordable homes whereby homes that are built to Advanced Energy's specifications are guaranteed a specific heating and cooling energy consumption at a specified comfort

level. *System*Vision™ Certified homes that have their heating and cooling expenditure above the pre-set threshold are reimbursed by the program. Advanced Energy provides the training and technical support that helps affordable housing market players in the design, construction and certification of energy-efficient affordable homes. The *System*Vision™ homes are reputed to contribute to improved health, safety, durability, comfort and energy efficiency in the state of North Carolina.

(4) It must be expert in the content and application of the test procedures and methodologies in IEEE Std. 112–2004 Test Method B or CSA C390–10, (incorporated by reference, see § 431.15). It must have satisfactory criteria and procedures for the selection and sampling of electric motors tested for energy efficiency

Advanced Energy Motor Engineers actively participate in motor and drive test standard development with IEEE, CSA, and IEC. We not only conduct these tests daily, our staff contributes to the development of these standards and others recognized in 10 CFR 431.15 including IEEE 114, IEEE 112 Method A, IEC 60034–2–1, IEC 61800–9–2 and many others. Our many years of experience operating our ISO 17025 test lab, participating on standard setting committees, and participation in DOE's NOPR process make us experts in the content and application of all prescribed test procedures and methodologies incorporated in 10 CFR part 431.15.

Advanced Energy utilizes a simple random number generator process for test sample selection when advising clients requiring random model selection. In addition we test drives for the Air Condition Heating and Refrigeration Institute's (AHRI) variable frequency drive certification program, partnering with Underwriters Laboratories (UL), where samples are selected at sites randomly and shipped to our lab for testing.

2. Standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity (CONFIDENTIAL)

2.1 Scope of Covered Products

DOE's Energy Efficiency Regulations cover certain electric motors and small motors.

Electric motors manufactured and distributed in commerce, as defined by *42 U.S.C. 6311(7),* must meet the energy conservation standards specified in the Code of Federal Regulations at *10 CFR 431.25 through 431.26*

Small electric motors manufactured and distributed in commerce, as defined by *42 U.S.C. 6291(16),* must meet the energy conservation standards specified in the Code of Federal Regulations at *10 CFR 431.446 through 431.448*

Detailed provisions are available in the following references:

Electric Motors: https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=6&action=viewlive

Small Motors: https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=7

Electronic Code of Federal Regulations: https://www.ecfr.gov/cgi-bin/retrieveECFR?n=pt10.3.431

2.2 Summary of Elements of the Certification Program

The following is a brief overview of the major elements of Advanced Energy's (AE) Motor Energy Efficiency Certification Service used for qualifying manufacturers' motors. Detailed descriptions of the items below are provided in section 2.3.

Application

Customer requests motor energy efficiency certification service through an application. The application is evaluated. A Motor Efficiency Verification Services Agreement shall be executed by both sides.

Initial Product Evaluation

At this stage the Applicant's product is evaluated. The AE staff requests pertinent information to that will be required in order to properly evaluate the product for compliance. The AE personnel will request all data that will help to properly evaluate the product including information about the manufacturer's production and test facilities used to manufacture and characterize the product.

Test Facility Evaluation

A client utilizing AE's certification services for motor efficiency may or may not utilize AEs lab for testing. For the purposes of ensuring that test facilities meet the highest standard required to ensure confidence in test result, all test facilities will be evaluated by Advanced Energy for conformance to ISO/IEC 17025 Standard (see details in Section 3 (TFE)).

Sample Selection

Manufacturer would provide to AE, a list of all covered motors that it manufacturers. Representative samples from the manufacturer's production line or stock are selected by AE's engineering staff for testing subsequent to evaluation and certification (see below).

Motor Build and Construction Evaluation

While sample testing provides a good indication of performance of samples at a point in time, Advanced Energy is capable of comprehensively evaluating the physical product to assess the manufacturer's design and construction philosophy in general and to a lesser extent, consistency between the electromagnetic design and test results. The manufacturer's motor design and construction will be evaluated to identify the critical design decisions and construction features that would affect its energy efficiency performance.

Initial Certification Testing

The samples selected per DOE sampling guidelines will be tested in an approved facility according to DOE test procedures and the results are evaluated in order to determine compliance.

On-Going Production Testing

After the initial certification, ongoing production testing will be required for continued compliance verification. Manufacturers will test samples of their products as part of their ongoing production procedures to determine continued compliance with the energy efficiency requirements. The results of the ongoing tests will be reviewed by AE.

Follow-Up Visits and Testing

AE staff would reserve the right to conduct follow up visits to manufacturer's facilities for random inspections to check compliance of production issues or test lab's ability to perform accurate testing of products.

Non-Conformance

For non-conforming test results found during testing at the manufacturer's own or other qualified test facilities, or any other forms of non-conformance Advanced Energy will apply its procedures to resolve the non-conformity of the applicant.

File Review

A Reviewer shall be appointed to review the work of the Evaluator. This is a critical step that precedes the Certification decision. In line with the ISO/IEC 17065 Guidelines, the Evaluator shall not serve as the Reviewer.

Certification Decision

Certification decision shall follow Evaluation and Review. After

determination that the motors meet the applicable standards, through the key activities of the preceding steps, the applicant is formally notified that the energy efficiency of their motors is duly verified and in compliance and is issued a Certificate of Conformity by AE.

Follow Up Service (FUS) Agreement

Advanced Energy and the manufacturer or Applicant will enter into a follow-up services agreement in conformity to ISO/IEC 17065.

2.3 Detailed Description of Key Elements of Certification Program

2.3.1 Application (APP)

The customer applies for motor energy efficiency verification and certification service. The application is made available to download online at the Advanced Energy website. Upon receipt of the application, AE will assign a qualified staff member to be responsible for handling the project. A Motor Efficiency Verification Services Agreement (also known as ''Advanced Energy Motor Efficiency Certification Services—Terms of Service'') shall be sent to the customer and shall be executed by both sides. A project initiation checklist (Form 101) shall be invoked after the execution of the necessary agreements. The assigned staff member will also serve as the Evaluator and proceed with the initial product evaluation steps and other subsequent steps as laid out below. At the time of appointment of an Evaluator, a File Reviewer will be designated. The Evaluator and File Reviewer shall NOT be the same person.

2.3.2 Initial Product Evaluation (EVAL)

As part of the Initial Product Evaluation, the following information is obtained by the Evaluator prior to and/or during the initial visit (if required) to the manufacturer's or applicant's facilities for the purposes of the test facility evaluation step (discussed below):

(a) Description of the products being submitted by basic specification such as type, brand name, model designations or model number, frame, poles or speed, rated voltage, phase, efficiency and any other pertinent information specific to the products.

(b) Design data and Alternative Efficiency Determination data and description of AEDM methods.

(c) Test data and information on energy consumption, and product test methods applied, test conditions, test reports, declaration and proof that the tests for the products being submitted were conducted in accordance with the applicable DOE test standards and information on the test facilities used to obtain the test data.

(d) Description of test facility, list of major equipment and test facility layout such as power supply, autotransformer, loading device, ambient control; list of instrumentation and calibration records and practices, measurement accuracy of instruments used in making measurements; with particular emphasis on torque, speed, electrical power, temperature instrumentation, and Accreditation if applicable.

(e) Information on the product design and construction, including the critical product features which would affect product energy efficiency performance. Information on quality control practices and parameters which must be controlled by the manufacturer in order to maintain a consistent product performance.

2.3.3 Test Facility Evaluation (TFE)

Advanced Energy Motor Efficiency Certification Service may use AE's lab, manufacturers' lab or other test facilities approved by AE for conducting testing (lab selection process is done using Form 103 Flow Chart).

The use of a manufacturer's test facility or other facility to conduct testing upon which Advanced Energy Motor Efficiency Certification service can be based, is contingent upon an evaluation conducted by Advanced Energy of the test facilities, equipment and competence of personnel conducting the testing and overall competency and capability of the facility to test motors to applicable DOE test procedures while complying with requirements of ISO/IEC 17025. The test facility used for conducting the tests shall be either ISO/IEC 17025 accredited or shall be evaluated for conformance to ISO/IEC 17025 standard by Advanced Energy using NIST Handbook 150 checklist and NIST Handbook 150–10 Checklist. The Evaluator shall follow Advanced Energy's *Form 103* flow chart for determining the test facility where testing can be conducted for Certification purposes.

Advanced Energy's evaluation of test facility (or Facility Evaluation) may include at least two of the following:

- Lab document and management system review
- Site visit for lab audit and witness testing
- Inter-lab test comparison
- Annual re-verification

The initial lab document review of test facility may include but not limited to, review of documents pertaining to equipment (specifications), calibration records, test lab layout, wiring and specifications, equipment accuracy and tolerances, past test reports, operating manuals, and quality system.

If a site visit is required as part of the Facility evaluation, it will involve Advanced Energy visiting the Client's lab to witness physical resources of the facility, general lab practices, the lab setup and equipment, calibration practices and calibration records, operational practices, setup and testing of motors (used to further evaluate the equipment), documentation and control of data, processing of test data, calculations and general assessment of engineering competence of lab staff. It is expected during this trip that data from benchmark motors tested in the Client's lab in the presence of Advanced Energy will be subjected to calculation of efficiency by both the lab and simultaneously and independently by AE. The results of this calculation comparison on same set of motors will highlight areas, if any, that needs attention in the Client's lab. During this visit the detailed evaluation of the calibration procedures and techniques are performed that are critical to obtaining the required accuracy of $+\backslash-0.2\%$. Advanced Energy staff will use personal observation and face to face communication during the visit to ensure that the Client's lab is suited to perform efficiency testing accurately.

If inter-lab testing is required as part of the Facility evaluation, AE will require the Client to supply three motors for comparison (benchmark) testing to be shipped to Advanced Energy's lab for testing. These same motors will be shipped back to the Client's facility for subsequent testing and the inter-lab results will be compared. Advanced Energy will specify the three motors based on the equipment list (dynamometers sizes and ranges) such that all equipment is evaluated equally. Benchmarking test results between Advanced Energy's NVLAP accredited lab and Client's lab will provide a strong indication of the relative accuracy of the Client's lab and can be used as a guide for lab evaluation.

If an annual reverification is included as part of the Client Facility evaluation it will take the form of one or more of the following: subsequent site visit, lab document review, inter-lab test comparison, as previously described.

2.3.4 Sample Selection (SAMP)

Manufacturer would provide a list of all covered motors that it manufacturers to AE. Representative samples from the manufacturer's production line or stock are selected by AE's engineering staff for

testing, subsequent to evaluation and certification. The main objective in sampling is to ensure that the motors meet the applicable energy efficiency standard with high confidence while reducing testing burden. The sampling plan that is adopted by AE shall follow the requirements of 10 CFR part 431 and statutory revisions applicable at the time of application.

From Advanced Energy's experience, most manufacturers use an Alternative Efficiency Determination Method (AEDM) for larger populations of covered product. If the manufacturer uses an AEDM, information of the AEDM would be submitted and evaluated at the initial product evaluation stage (EVAL). AEDM information shall again be reviewed during sample selection. Following 10 CFR 431, there shall be 5 samples of no fewer than 5 motors (25 motors) tested and the efficiency results compared with the AEDM predicted values according to the regulations.

The factors to consider, including two of the basic models among the five basic models, being with the highest unit volumes of production in the prior year, and basic models being of different horsepower and frame numbers without duplication, and all other sample criteria shall be followed strictly.

2.3.5 Motor Build Inspection Analysis and Construction Evaluation (MBIA)

The manufacturer's motor design and construction is evaluated to identify the critical design decisions and construction features that would affect its energy efficiency performance. Advanced Energy has significant experience in this area. During MBIAs, AE obtains sample motors from the customer and tears them down and measures and analyzes critical motor dimensions, such as active stack length, air gap, lamination thickness, and bearings specifications. The analysis results in a detailed report with photographs and data tables. The MBIA is non-destructive and motors are reassembled to their original as received condition. In addition to the evaluation of motor design and build, the manufacturer's factory quality assurance procedures in certain areas that affect the key performance indicators for energy efficiency will be reviewed. The manufacturer's in-process testing during production runs will also be reviewed.

2.3.6 Initial Certification Testing (ICT)

The samples selected shall be tested according to 10 CFR part 431 and the test results shall be processed in order to determine compliance.

Prior to ICT, Advanced Energy would have already evaluated and qualified a test facility that would be used to obtain the test data. The qualification would ensure that the lab is capable of performing testing according to DOE's test procedures. The test facility shall maintain the most up-to-date data processing sheets to perform tests according to the relevant standards such as IEEE 112, IEEE 114, CSA C390, and CSA C747.

Advanced Energy reserve the right to request raw data for any selected basic model(s) and process same, using data processing sheet of its own laboratory in order to check the work of the test facility.

The test data and full load efficiency of the sample set shall be processed in accordance with 10 CFR 431. Non-conformance of test results for the ICT would be addressed in accordance with 10 CFR431 and in line with Advanced Energy guidelines.

2.3.7 On-Going Production Testing (OGT)

On-going production testing will be required for continued compliance verification. These will be carried out in the same facilities as the ICT or in an approved facility. Manufacturers will test samples of their products as part of their ongoing production procedures to determine continued compliance with the energy efficiency requirements.

The on-going production testing shall include an AEDM subsequent verification. Statistically valid samples of the manufacturer's production shall be selected for the subsequent verification of the AEDM, in line with 10 CFR 431.

The process for review of results of the ongoing tests by AE will be in similar fashion as the review of the ICT test results.

2.3.8 Follow-Up Visits and Testing (FUV)

Advanced Energy considers it an important goal that manufacturers using its Certification Services do not relent in their efforts to ensure that their products meet compliance requirements on an on-going basis. In order to meet this goal, Advanced Energy would reserve the right to conduct follow-up visits for inspections to check compliance of production issues or test facility's ability to perform accurate testing of products.

One visit may be conducted to a manufacturer's facility each year to observe that the manufacturers' production and control practices are consistent with Advanced Energy's expectations and. During this visit, samples of the product shall also be selected by the Advanced Energy staff representative and tested by the manufacturer for verification. Data processing shall follow similar practices as ICT and the test results are compared to the AEDM generated values. The manufacturer may use the reported data to meet the requirements of the AEDM subsequent verification.

2.3.9 Non-Conformance (NCF)

For non-conforming test results found during testing at an approved test facility, or any other forms of non-conformance, including any violation or not meeting the conditions of certification, Advanced Energy shall inform the client of the nonconformities. Advanced Energy shall provide information regarding additional evaluation tasks that are needed to verify that all nonconformities have been corrected. If the client agrees to completion of the additional evaluation tasks, the process of EVAL shall be repeated to complete the additional evaluation tasks. The results of all evaluation activities shall be documented for the purposes of the file REVIEW step.

All such non-conformities will be addressed on a case by case basis. Options available include but not limited to:

(a) Remove the non-conforming products from consideration

(b) perform comprehensive analysis to determine the cause of non-conformance, determine remedies, evaluate effectiveness of remedies, subject to re-evaluation.

2.3.10 File Review (REVIEW)

This is a critical step that precedes the Certification decision and it is meant to ensure that all the important preceding steps and requirements are met during the Evaluation of the products for Certification. An Advanced Energy staff member shall be appointed as a Reviewer to review the work of the Evaluator and to determine if the necessary provisions of ISO/IEC 17065 are followed. In line with the procedures, the Evaluator shall not serve as the Reviewer.

The outcome of the REVIEW is a recommendation. The recommendation may identify a non-conformity that had been a result of oversight at the EVAL stage or may have occurred during the period between the EVAL and REVIEW. Recommendation may also be for a Certification decision. All recommendations based on the REVIEW shall be documented. It is acceptable for the review and the certification decision

to be completed concurrently by the same AE Staff Member.

2.3.11 Certification Decision (CERT)

The project for certifying motors, following the application to Advanced Energy, Evaluation, Assessment and Qualification of test facility, testing to DOE Standards, Review and Processing of Data, File Review and Recommendation for Approval concludes with the issuance of a Certificate of Conformity by Advanced Energy and subsequent issuance of a Compliance Certificate number by the US Department of Energy. The designated AE staff member responsible for the Certification decision will also be responsible for ensuring that Follow-up surveillance activities are in place.

2.3.12 Follow-Up Service (FUS) Agreement

Advanced Energy and the Applicant will enter into a follow-up services agreement. The FUS agreement defines the conditions for maintaining certification such as access to manufacturing sites, records, follow-up inspections, product re-testing and AEDM Subsequent Verification.

3. Qualifications of Advanced Energy To Certify Motors and Its Expertise in Test Procedures

3.1 Introduction

In 1997, Advanced Energy's motor testing lab became the first motor lab in the world to be accredited for motor efficiency testing by the National Institute of Standards and Technology (NIST), under the National Voluntary Laboratory Accreditation Program (NVLAP Code: 200081–0). It remains the only independent motor lab in North America to hold this accreditation which makes it uniquely qualified to help evaluate and validate motors, drives and related products.

Energy efficiency testing is what Advanced Energy is known for globally. Through the testing services of Advanced Energy, several motor manufacturers around the globe have been certified to U.S. Department of Energy (DOE) requirements for motor efficiency through self-certification. Our testing capabilities apply to a wide variety of international standards and our knowledge and reputation for accuracy has helped Advanced Energy to gain the trust of motor manufacturers and users worldwide, and has enabled us to help manufacturers and users to validate performance claims and to achieve compliance with US DOE regulations and government regulations in other jurisdictions.

Specifically, with regard to electric motors (and drives), Advanced Energy's past activities include:

- Testing to US Department of Energy (USDOE) requirements
- Testing to Natural Resources of Canada (NRCan) requirements
- Testing to IEEE Standards and other International standards
- Testing to International Electro technical Commission (IEC) requirements
- Testing to NOM (Mexico) Standards and requirements
- Testing to AHRI standards
- Engineering Services to Develop Electric Motor Labs around the world
- Certification of motor energy efficiency and performance for global R&D Companies, inventers and product developers
- Engineering Services for Motor Designers and Application Customers
- Performance of Motor Build and Inspection Analysis (MBIA)
- Development of Technical Standards for Motor Testing
- Applied Research on Motor Design, Application and Testing
- Research in collaboration with utilities on the effect of electric power quality and smart grid on electric motors
- Reliability testing of Motors for OEM Equipment

The bulk of Advanced Energy motors related work is carried out in its state-of-the-art motor test laboratory. The laboratory has maintained an ISO/IEC 17025 accreditation since 1997 through NIST/NVLAP. The lab has also maintained a NOM designation through ANCE, the first laboratory outside Mexico to gain such designation. From 2010 to 2014 the laboratory participated in UL's data acceptance program and has worked closely with UL to test motors intended for certification for UL clients. The laboratory has also in the past assisted CSA to certify motors for its clients, following a witness by CSA staff.

Advanced Energy's Motor Efficiency Verification Services program is an ISO/IEC Guide 17065 compliant program that is subjected to ANSI accreditation as evidenced by the issuance of accreditation by this august body (see Appendix).

The certification of motors under AE's Motor Energy Efficiency Certification Service is based upon the satisfactory evaluation and testing to the requirements of the applicable US DOE standards in effect in an approved test facility, which is either the AE test facility, the client's facilities or other facility approved by Advanced Energy.

3.2 Summary of Advanced Energy Qualifications

(a) Advanced Energy's credentials in the motor efficiency field is unmatched. The company has been testing motors since 1989 and has operated an independent test lab since that time. The lab has helped motor manufacturers, OEMs, utilities and industrial customers since 1989. A Motors and Drives group's history and summary of milestones of the can be found at: *https://www.advancedenergy.org/portal/mad/images/pdf_documents/Motor_History_Timeline_2014.pdf*.

(b) Advanced Energy has maintained an ISO/IEC 17025 based accreditation with NVLAP/NIST for the past 20 years. AE is familiar with running and operating a quality system. Advanced Energy has achieved ISO/IEC 17065 product certification accreditation with ANSI and plans to maintain this accreditation on an ongoing basis. With the company's strong knowledge of motors, motor testing and DOE rules on which the Certification is based, Advanced Energy is capable of operating a program for certifying electric motors and small electric motors in a highly competent manner.

(c) Advanced Energy has been involved in DOE rulemaking process since 1992 and has extensive knowledge of the regulations. The company has actively participated in DOE public meetings for the rule making process and has contributed white papers and comments to guide the process since 1992. Several comments provided by Advanced Energy for the small motors and electric motors rule making are often referenced in the Code of Federal Regulations publications.

(d) Advanced Energy's motor test lab is globally recognized for its accuracy in applying the IEEE 112, CSA C390, IEEE 114 and CSA C747 standard that are required for certifying motors. Advanced Energy's lab has served as a benchmark laboratory for other laboratories to evaluate their own performance. In this regard, Advanced Energy's test results was used as the standard to judge other labs' performance. Advanced Energy has also provided engineering services to several other labs around the world to enable them achieve ISO/IEC 17025 accreditation from NVLAP.

(e) Advanced Energy has contributed expertise in developing the applicable test standards required for the motor tests and is well familiar with these standards. Advanced Energy staff have been involved in various capacities to

develop the IEEE and CSA motor efficiency test standards.

(f) Advanced Energy staff members frequently serve as subject matter expertise on motors in several national and international forums. Staff members make presentations and conduct several trainings yearly on motor basics and applications to industry and utility customers. Staff members also write and present technical papers in scientific settings and in industry and trade publications of the electric motor industry.

(g) Advanced Energy is independent and does not have or maintain any relationship, direct or indirect, with any electric motor manufacturer, importer, distributor, or any other related entity that might pose a conflict of interest in any way shape or form. The Company similarly does not have any relationship with the US Department of Energy that might hinder its ability to serve as an independently recognized national certification program for operating a certification system for certifying the efficiency and compliance of electric motors and small electric motors with the applicable energy efficiency standards.

(h) Advanced Energy has developed extensive measures to ensure impartiality, through various checks at every stage of a given project.

3.3 Advanced Energy's Experience With Certification Matters

(1) Advanced Energy has significant experience with certification matters. Since 2000, Advanced Energy currently operates its own Quality Assurance Program for Motor Repair Centers. This national program, known as Proven Efficiency Verification program, conducts audits of motor repair centers, including before and after testing and issues Motor Repair Centers that have met the requirements a Certificate that is renewed every year. Launched in 1999, the PEV program precedes a similar program started in 2014 by the Electrical Apparatus Serves Association, the trade association for Motor Repair Centers. Advanced Energy was consequently selected as one of the approved Auditors for the EASA program.

(2) Advanced Energy runs a certification program in the residential housing market called *System*Vision™. *System*Vision™ is an Advanced Energy Certification Program for affordable homes whereby homes that are built to Advanced Energy's specifications are guaranteed a specific heating and cooling energy consumption at a specified comfort level. *System*Vision™ Certified homes that have their heating and cooling expenditure above the threshold are reimbursed by the program. Advanced Energy provides the training and technical support that helps affordable housing market players in the design, construction and certification of energy-efficient affordable homes. The *System*Vision™ homes are reputed to contribute to improved health, safety, durability, comfort and energy efficiency in the state of North Carolina. For the last 17 years the Certification Program has been guaranteeing the heating and cooling bills as well as homeowner comfort for the residential new construction, affordable housing market in the State. For more information visit: *https://www.advancedenergy.org/portal/systemvision/*.

(3) Advanced Energy has operated a HVAC contractor Certification program, launched in 2012. Advanced Energy's certification services for HVAC contractors was developed in response to and as a requirement of the Environmental Protection Agency (EPA)'s Energy Star New Homes Program—HQUITO. Our program serves to not only help HVAC contractors become certified in the ENERGY STAR program, but to also support their growth and success with technical assistance and best-in-class training and resources. More information at: *https://www.advancedenergy.org/portal/hvac/*.

(4) Advanced Energy is the only organization in North Carolina selected by the utilities to certify solar installations for commissioning onto the grid. This activity comprises going on site to inspect installations to ensure that they meet the Duke Energy design codes as well as related UL and IEEE standards.

4. Independent Status of Advanced Energy

Advanced Energy is an independent organization, chartered by the North Carolina Utilities Commission to fulfill the mission for which it was setup. Advanced Energy is a nonprofit energy services and engineering firm working with electric utilities, government agencies, public and private organizations to provide research, testing, training, consulting and program design services in the residential, commercial and industrial sectors markets.

Advanced Energy's delivery team is organized into the following business divisions—Building Science, Energy Efficiency Services, Transportation Services, Solar, and Motors and Drives. The company does business in those key markets.

As noted above in section 1 (Program Criteria Narrative) Advanced Energy does have clients including electric motor manufacturers, importers, distributors, private labelers, vendors, trade associations and others that utilize our lab for testing and pay us for those services. In all cases we perform testing to prescribed standards and offer test results. We do not offer advice or consultation in motor design or motor efficiency improvement. There are consultants in the motor industry that do that and many of them utilize our lab as new electric motor products are developed. In these cases Advanced Energy's accuracy and repeatability in motor testing is valued and used by others to improve products. Other clients use our test data to improve their products at times but they do that solely on their own with nothing further than test data offered from Advanced Energy. For motor efficiency certification clients either pass or fail the test and it is solely up to them to determine next steps.

We also tear motors down documenting findings providing reports of all observations and a comment on the overall quality of construction. We have done this for costing purposes too with DOE subcontractors seeking to define the cost of materials required to achieve prescribed efficiency levels in the DOE rules. Providing test data and observation reports to our clients for compensation may appear to some to constitute a conflict. We assert all other approved DOE third parties certification programs for motor efficiency offer similar test services to their clients and that by doing so we are all expert in certification processes as required by the DOE program criteria.

We assert that Advanced Energy does not have affiliation, financial or otherwise with any motor manufacturer or any of the client categories mentioned above. Neither is the company controlled by any other entity than its Management and Board of Directors, appointed by the sitting Governor of North Carolina.

Further we assert Advanced Energy has no conflict of interest with any of its clients with respect to operating a nationally recognized motor certification program.

5. Appendices [2]

5.1 Accreditation Certificate From ANSI

(attached)

[2] Attachments and data submitted by Advanced Energy with its petition for rulemaking are available in the docket at *http://www.regulations.gov.*

5.2 Accreditation Certificate From NVLAP

(attached)

5.3 Accreditation Certificate From NOM?

(attached)

5.4 Form 103

(attached)

5.5 MBIA

(attached)

[FR Doc. 2019–14462 Filed 7–5–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with Title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Advanced Scientific Computing Advisory Committee will be renewed for a two-year period beginning on June 28, 2019.

The Committee will provide advice to the Director, Office of Science (DOE), on the Advanced Scientific Computing Research Program managed by the Office of Advanced Scientific Computing Research.

Additionally, the renewal of the Advanced Scientific Computing Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Christine Chalk at (301) 903–5152 or email: *christine.chalk@science.doe.gov.*

Signed in Washington DC, on June 28, 2019.

Rachael J. Beitler,

Acting Committee Management Officer.

[FR Doc. 2019–14460 Filed 7–5–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–476]

Application To Export Electric Energy; ALEL Technologies LLC

AGENCY: Office of Electricity, Department of Energy (DOE).

ACTION: Notice of application.

SUMMARY: ALEL Technologies LLC (Applicant or ALEL) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 7, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On June 24, 2019, DOE received an application from ALEL for authorization to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. The Applicant states that it will make wholesale purchases in the Electric Reliability Council of Texas and the California Independent System Operator, and possibly in other geographic regions and energy markets in the United States as well.

The Application states that ''[N]either ALEL, nor its owner, owns, operates or controls any electric generation, transmission or distribution facilities,'' that neither ''has a franchised service area,'' and that ALEL has no ''obligation to serve native load within a franchised service area.'' The electric energy that the Applicant proposes to export to Mexico over international electric transmission facilities would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning ALEL's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–476. An additional copy is to be provided directly to both Joaquin Leal Jimenez, ALEL Technologies LLC, 778 Boylston St, Unit 6B, Boston, MA 02199, and Antonio Peña, Greenberg Traurig, PA, 333 SE 2nd Avenue, Miami, FL 33131.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on July 1, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–14445 Filed 7–5–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD19–9–000]

City of Beaverton, Oregon; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On June 14, 2019, as supplemented June 20, 2019, the City of Beaverton, Oregon, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Weir Road Pressure Reducing Valve Project would have an installed capacity of 300 watts (W), and would be located along an existing 12-inch pipeline within the Weir Road pressure reducing valve vault in the City of Beaverton, Washington County, Oregon.

Applicant Contact: Geoff Hunsaker, City of Beaverton, PO Box 4755, Beaverton, OR 97076, Phone No. (503) 572–4239, Email: *ghunsaker@beavertonoregon.gov.*

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, Email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) One 300–W turbine-generator unit; (2) a 2-inch pipeline transporting water from the existing 12-inch pipeline to the generator, and returning it to the mainline; and (3) appurtenant facilities. The proposed project would have an estimated annual generation of 2.7 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Weir Road Pressure Reducing Valve Project will not interfere with the primary purpose of the conduit, which is to transport water for municipal use. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD19–9) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: June 27, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14452 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2018).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Partial Transfer of License and Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

	Project No.
Pacific Gas & Electric Company	2310–227 2784–006
Nevada Irrigation District	14530–001

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Partial Transfer of License and Amendment.

b. *Project Nos.:* 2310–227, 2784–006, and 14530–001.

c. *Date filed:* January 22, 2019.

d. *Applicants:* Pacific Gas & Electric Company (transferor), Nevada Irrigation District (transferee).

e. *Name of Projects:* Drum Spaulding Hydroelectric Project (P–2310), Rollins Transmission Line Project (P–2784), proposed Deer Creek Hydroelectric Project (P–14530).

f. *Location:* Deer Creek development of the Drum Spaulding Project—located on Deer Creek in Nevada County, California. Rollins Transmission Line Project—located in the Bear River basin in Placer and Nevada counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicants Contacts:* For Transferor: Ms. Annette Faraglia, Chief Counsel Hydro Generation, Pacific Gas and Electric Company, 77 Beale Street, B30A–3005, San Francisco, CA 94105, (415) 973–7145, Email: *annette.faraglia@pge.com* and Ms. Stephanie Maggard, Director, Power Generation, Pacific Gas and Electric Company, 245 Market Street, N11E–1136, San Francisco, CA 94105, (415) 973–2812, Email: *Stephanie.maggard@pge.com.*

For Transferee: Mr. Remleh Scherzinger, General Manager, Nevada Irrigation District, 1036 West Main St., Grass Valley, CA 95945–5424, (530) 273–6185, email: *Scherzinger@nidwater.com* and Minasian Law Firm, ATTN: Andrew McClure, District Counsel, 1681 Bird Street, Oroville, CA 95965, (530) 533–2885, email: *amcclure@minasianlaw.com.*

i. *FERC Contacts:* Steven Sachs, (202) 502–8666 or *steven.sachs@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the date the Commission issues this notice.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, or protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket numbers P–2310–227, P–2784–006, and P–14530–001.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer and Amendment Requests:* The applicants request a partial transfer of the Deer Creek Development, which is part of Pacific Gas & Electric Company's Drum-Spaulding Project No. 2310, to the Nevada Irrigation District and to establish it as a separate project, Deer Creek Project No. 14530. The applicants also request that the Commission remove the transmission line for the Deer Creek Development from the Drum-Spaulding Project and incorporate it into Pacific Gas & Electric Company's license for the Rollins Transmission Line Project No. 2784.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676, email *FERCOnlineSupport@ferc.gov,* or for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests and other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 27, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14447 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–30–000]

Commission Information Collection Activities (FERC–920—Electric Quarterly Reports); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–920 [Electric Quarterly Reports (EQR)].

DATES: Comments on the collections of information are due SEPTEMBER 6, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–30–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–920 [Electric Quarterly Reports (EQR)].

OMB Control No.: 1902–0255.

Type of Respondent: Public utilities and non-public utilities with more than a *de minimis* market presence.

Type of Request: Three-year extension of the FERC–920 information collection with no changes to the current reporting requirements.[1]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Abstract: The Commission originally set forth the EQR filing requirements in Order No. 2001 (Docket No. RM01–8–000, issued April 25, 2002, at *http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=2270047*). Order No. 2001 required public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based rate sales and the contractual terms and conditions in their agreements for all jurisdictional services.[2] The Commission established the EQR reporting requirements to help ensure the collection of information needed to perform its regulatory functions over transmission and sales, while making data more useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c) to have rates on file in a convenient form and place. As noted in Order No. 2001, the EQR data is designed to ''provide greater price transparency, promote competition, enhance confidence in the fairness of the markets, and provide a better means to detect and discourage discriminatory practices.''

Since issuing Order No. 2001, the Commission has provided guidance and refined the reporting requirements, as necessary, to reflect changes in the Commission's rules and regulations.[3] The Commission also adopted an Electric Quarterly Report Data Dictionary, which provides in one document the definitions of certain terms and values used in filing EQR data.[4]

To increase transparency broadly across all wholesale markets subject to the Commission's jurisdiction, the Commission issued Order No. 768 in 2012.[5] Order No. 768 required market participants that are excluded from the Commission's jurisdiction under the Federal Power Act section 205 (non-public utilities) and have more than a *de minimis* market presence to file EQRs with the Commission. In addition, Order No. 768 revised the EQR filing requirements to build upon the Commission's prior improvements to the reporting requirements and further enhance the goals of providing greater price transparency, promoting competition, instilling confidence in the fairness of the markets, and providing a better means to detect and discourage anti-competitive, discriminatory, and manipulative practices.

EQR information allows the public to assess supply and demand fundamentals and to price interstate wholesale market transactions. This, in turn, results in greater market confidence, lower transaction costs, and ultimately supports competitive markets. In addition, the data filed in the EQR strengthens the Commission's ability to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the Federal Power Act. Without this information, the Commission would lack some of the data it needs to examine and approve or modify electric rates.

Type of Respondent: Public utilities, and non-public utilities with more than a *de minimis* market presence.

Estimate of Annual Burden and Cost:[6] The Commission estimates the annual public reporting burden for the information collection as:

[1] This does not include any changes to the estimates from the Notice Seeking Comments on proposed revisions and clarifications to the EQR reporting requirements, currently pending in Docket No. RM01–8–000, *et al.*

[2] *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334, *order refining filing requirements,* Order No. 2001–E, 105 FERC ¶ 61,352 (2003), *order on clarification,* Order No. 2001–F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements,* Order No. 2001–G, 72 FR 56735 (Oct. 4, 2007), 120 FERC ¶ 61,270, *order on reh'g and clarification,* Order No. 2001–H, 73 FR 1876 (Jan. 10, 2008), 121 FERC ¶ 61,289 (2007), *order revising filing requirements,* Order No. 2001–I, 73 FR 65526 (Nov. 4, 2008), 125 FERC ¶ 61,103 (2008).

[3] *See, e.g., Revised Public Utility Filing Requirements for Electric Quarterly Reports,* 124 FERC ¶ 61,244 (2008) (providing guidance on the filing of information on transmission capacity reassignments in EQRs); *Notice of Electric Quarterly Reports Technical Conference,* 73 FR 2477 (Jan. 15, 2008) (announcing a technical conference to discuss changes associated with the EQR Data Dictionary).

[4] Order No. 2001–G, 120 FERC ¶ 61,270 (2007).

[5] Order No. 768, 77 FR 61896 (Oct. 11, 2012), FERC Stats. & Regs. ¶ 31,336 (2012).

[6] The cost is based on FERC's 2019 Commission-wide average salary cost (salary plus benefits) of $80.00/hour. The Commission staff believes the FERC FTE (full-time equivalent) average cost for wages plus benefits is representative of the corresponding cost for the industry respondents.

FERC–920—ELECTRIC QUARTERLY REPORT (EQR)

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost per response	Total annual burden hours & total annual cost
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
2,595	4	10,380	18.1 hrs.; $1,448	187,878 hrs.; $15,030,240.

Dated: June 27, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14451 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1821–020.

Applicants: Goshen Phase II LLC.

Description: Updated Market Power Analysis for Northwest Region of Goshen Phase II LLC.

Filed Date: 6/28/19.

Accession Number: 20190628–5330.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER10–2249–008.

Applicants: Portland General Electric Company.

Description: Updated Market Power Analysis in the Northwest Region for Portland General Electric Company.

Filed Date: 6/28/19.

Accession Number: 20190628–5334.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER13–520–009; ER10–2605–013; ER12–1626–010; ER13–1266–021; ER13–1267–009; ER13–1268–009; ER13–1269–009; ER13–1270–009; ER13–1271–009; ER13–1272–009; ER13–1273–009; ER13–1441–009; ER13–1442–009; ER13–521–009; ER15–2211–018.

Applicants: Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XIX, LLC, Solar Star California XX, LLC, Topaz Solar Farms LLC, CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power L.L.C., Vulcan/BN Geothermal Power Company, Yuma Cogeneration Associates, CalEnergy, LLC, MidAmerican Energy Services, LLC.

Description: Triennial Market Power Update for the Southwest Region of the BHE MBR Sellers.

Filed Date: 6/28/19.

Accession Number: 20190628–5331.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER18–1077–001; ER15–1218–008; ER16–38–006; ER16–39–005; ER17–157–004; ER17–2162–005; ER17–2163–005; ER17–2341–002; ER17–2453–002; ER18–1076–001; ER18–1775–003; ER18–713–001.

Applicants: GASNA 36P, LLC, CA Flats Solar 150, LLC, GASNA 6P, LLC, CA Flats Solar 130, LLC, Imperial Valley Solar 3, LLC, Moapa Southern Paiute Solar, LLC, SunE Beacon Site 2 LLC, Kingbird Solar A, LLC, Kingbird Solar B, LLC, Solar Star California XIII, LLC, 64KT 8me LLC, SunE Beacon Site 5 LLC.

Description: Triennial Market-Based Rate Update for the Capital Dynamics Southwest MBR Sellers.

Filed Date: 6/28/19.

Accession Number: 20190628–5337.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER18–1489–001; ER13–1101–026; ER13–1541–025; ER14–661–016; ER14–787–019; ER15–1475–011; ER15–2593–010; ER15–54–010; ER15–55–010; ER16–1154–008; ER16–1882–003; ER16–452–009; ER16–705–007; ER16–706–007; ER17–2508–002; ER17–252–003; ER17–532–002.

Applicants: SP Cimarron I, LLC, Parrey, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, SG2 Imperial Valley LLC, Macho Springs Solar, LLC, Lost Hills Solar, LLC, Blackwell Solar, LLC, North Star Solar, LLC, Desert Stateline LLC, RE Tranquillity LLC, RE Garland A LLC, RE Garland LLC, Boulder Solar Power, LLC, RE Gaskell West 1 LLC, PPA Grand Johanna LLC, 2016 ESA Project Company, LLC.

Description: Compliance filing of SP Cimarron I, LLC, et. al. 2886–000.

Filed Date: 6/28/19.

Accession Number: 20190628–5332.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–1485–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing in ER19–1485—NIMECA Formula Rate to be effective 6/1/2019.

Filed Date: 7/1/19.

Accession Number: 20190701–5291.

Comments Due: 5 p.m. ET 7/22/19.

Docket Numbers: ER19–2277–001.

Applicants: ITC Midwest LLC.

Description: Tariff Amendment: ITC Midwest Supplemental Filing of Communications Sharing Agreement to be effective 6/28/2019.

Filed Date: 7/1/19.

Accession Number: 20190701–5273.

Comments Due: 5 p.m. ET 7/22/19.

Docket Numbers: ER19–2315–000.

Applicants: Midcontinent Independent System Operator, Inc., WPPI Energy.

Description: § 205(d) Rate Filing: 2019–07–01_WPPI Revisions to Attachments O, GG & MM to be effective 9/1/2019.

Filed Date: 7/1/19.

Accession Number: 20190701–5102.

Comments Due: 5 p.m. ET 7/22/19.

Docket Numbers: ER19–2316–000.

Applicants: Renewable Energy Asset Management Group, LLC.

Description: Baseline eTariff Filing: Application For Market Based Rate to be effective 7/2/2019.

Filed Date: 7/1/19.

Accession Number: 20190701–5103.

Comments Due: 5 p.m. ET 7/22/19.

Docket Numbers: ER19–2317–000.

Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.

Description: § 205(d) Rate Filing: 2019–07–01_SA 2787 MEC–IPL 1st Rev WDS (George) to be effective 9/1/2019.

Filed Date: 7/1/19.

Accession Number: 20190701–5220.

Comments Due: 5 p.m. ET 7/22/19.

Docket Numbers: ER19–2318–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: Rate Schedule FERC No. 87 Supplement to be effective 9/1/2019.

Filed Date: 7/1/19.

Accession Number: 20190701–5225.

Comments Due: 5 p.m. ET 7/22/19.

Docket Numbers: ER19–2319–000.

Applicants: Crystal Lake Wind II, LLC.

Description: Tariff Cancellation: Crystal lake Wind II, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 7/2/2019.

Filed Date: 7/1/19.
Accession Number: 20190701–5230.
Comments Due: 5 p.m. ET 7/22/19.
Docket Numbers: ER19–2320–000.
Applicants: Osceola Windpower, LLC.
Description: Tariff Cancellation: Osceola Windpower, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 7/2/2019.
Filed Date: 7/1/19.
Accession Number: 20190701–5235.
Comments Due: 5 p.m. ET 7/22/19.
Docket Numbers: ER19–2321–000.
Applicants: Osceola Windpower II, LLC.
Description: Tariff Cancellation: Osceola Windpower II, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 7/2/2019.
Filed Date: 7/1/19.
Accession Number: 20190701–5241.
Comments Due: 5 p.m. ET 7/22/19.
Docket Numbers: ER19–2322–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 211 to be effective 9/1/2019.
Filed Date: 7/1/19.
Accession Number: 20190701–5251.
Comments Due: 5 p.m. ET 7/22/19.
Docket Numbers: ER19–2323–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2019–07–01_SA 2012 Ameren-City of California, MO 1st Rev WDS to be effective 9/1/2019.
Filed Date: 7/1/19.
Accession Number: 20190701–5261.
Comments Due: 5 p.m. ET 7/22/19.
Docket Numbers: ER19–2324–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3125R6 Basin Electric Power Cooperative NITSA NOA to be effective 6/1/2019.
Filed Date: 7/1/19.
Accession Number: 20190701–5279.
Comments Due: 5 p.m. ET 7/22/19.
Docket Numbers: ER19–2325–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: APCo-Gulf TFCAT A&R Service Agreements Amendment Filing to be effective 1/1/2019.
Filed Date: 7/1/19.
Accession Number: 20190701–5318.
Comments Due: 5 p.m. ET 7/22/19.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC19–1–000.
Applicants: I Squared Capital.
Description: Self-Certification of FC of I Squared Capital.
Filed Date: 6/28/19.
Accession Number: 20190628–5315.
Comments Due: 5 p.m. ET 7/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–14426 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–2269–000]

Dougherty County Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Dougherty County Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 22, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–14427 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–15–000]

Managing Transmission Line Ratings; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a staff-led technical conference in the above-referenced proceeding on Tuesday and Wednesday, September 10–11, 2019 from approximately 8:45 a.m. to 5:00 p.m. Eastern time. The conference will be held in Hearing Room 1 at Commission headquarters, 888 First Street NE, Washington, DC 20426. Commissioners may attend and participate.

The purpose of this conference is to discuss issues related to transmission

line ratings, with a focus on dynamic and ambient-adjusted line ratings.[1] In particular, this conference will explore what transmission line rating and related practices might constitute best practices, and what, if any, Commission action in these areas might be appropriate. Further details and a formal agenda will be issued prior to the conference.

The workshop will be open for the public to attend. Advance registration is not required to attend, but is encouraged. Attendees may register at the following web page: *http://www.ferc.gov/whats-new/registration/09-10-19-form.asp.* In-person attendees should allow time to pass through building security procedures before the start time of the technical conference.

Those wishing to participate as a panel member in this conference should submit a nomination form online by 5:00 p.m. on July 17, 2019 at: *http://www.ferc.gov/whats-new/registration/09-10-19-speaker-form.asp.* At this web page, please provide an abstract of the issue(s) you propose to address. Due to time constraints, we may not be able to accommodate all those interested in speaking.

The conference will be transcribed and webcast. Transcripts will be available immediately for a fee from Ace Reporting (202–347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact Dillon Kolkmann at *Dillon.Kolkmann@ferc.gov* or (202) 502–8650. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: June 28, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14429 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

[1] For the purposes of this technical conference, the following definitions will be used. ''Ambient-adjusted line ratings'' are defined as ratings that are adjusted daily, hourly, or more frequently to account for ambient air temperatures. ''Dynamic line ratings'' are defined as line ratings that are adjusted hourly or more frequently to account for local weather conditions (*e.g.,* ambient temperature, wind, precipitation, solar radiation) and/or conductor parameters (conductor temperature, tension, sag, clearance) based on data collected by local weather and/or line sensors.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–178–000]

Alaska Gasline Development Corporation; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Alaska LNG Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) with the participation of the cooperating agencies listed below, has prepared a draft environmental impact statement (EIS) for the Alaska LNG Project (Project) proposed by the Alaska Gasline Development Corporation (AGDC). AGDC requests authorization to construct and operate new gas treatment facilities, an 806.6-mile-long natural gas pipeline and associated aboveground facilities, and a 20-million-metric-ton per annum liquefaction facility to commercialize the natural gas resources of Alaska's North Slope. The Project would have an annual average inlet design capacity of up to 3.7 billion standard cubic feet per day and a 3.9 billion standard cubic feet per day peak capacity.

The draft EIS assesses the potential environmental effects of Project construction and operation in accordance with the requirements of the National Environmental Policy Act (NEPA). As described in the EIS, the FERC staff concludes that approval of the Project would result in a number of significant environmental impacts, but the majority of impacts would be less than significant based on the impact avoidance, minimization, and mitigation measures proposed by AGDC and those recommended by staff in the draft EIS. However, some of the adverse impacts would be significant even after the implementation of mitigation measures.

The United States (U.S.) Department of Transportation Pipeline and Hazardous Materials Safety Administration, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Coast Guard, Bureau of Land Management (BLM), U.S. Fish and Wildlife Service, National Park Service, U.S. Department of Energy, and National Marine Fisheries Service participated as cooperating agencies in the preparation of this EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the Project.

The BLM will adopt and use the EIS to consider issuing a right-of-way grant for the portion of the Project on BLM-managed lands. Other cooperating agencies will use this EIS in their regulatory processes and to satisfy compliance with NEPA and other related federal environmental laws (*e.g.,* the National Historic Preservation Act).

Section 810(a) of the Alaska National Interest Lands Conservation Act, 16 United States Code 3120(a), also requires the BLM to evaluate the effects of the alternatives presented in the draft EIS on subsistence activities, and to hold public hearings if it finds that any alternative may significantly restrict subsistence uses. The preliminary evaluation of subsistence impacts indicates that the cumulative case analyzed in the draft EIS may significantly restrict subsistence uses for the communities of Nuiqsut, Kaktovik, Utqiagvik, and Anaktuvuk Pass. Therefore, the BLM will hold public hearings and solicit public testimony in these potentially affected communities.

Distribution and Comments on the Draft Environmental Impact Statement

The Commission mailed a copy of the draft EIS to federal, state, and local government representatives and agencies; elected officials; Alaska Native tribal governments and Alaska Native Claims Settlement Act Corporations; and local libraries and newspapers in the area of the Alaska LNG Project. The draft EIS was also mailed to property owners that could be affected by Project facilities, individuals requesting intervenor status in the FERC's proceedings, and other interested parties (*i.e.,* individuals and environmental and public interest groups who provided scoping comments or asked to remain on the mailing list). Paper copy versions of this EIS were mailed to subsistence communities, libraries, and those specifically requesting them; all others received a CD version.

The draft EIS is also available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*) on the Environmental Documents page (*http://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), then click on General Search and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP17–178). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the draft EIS may do so. Your comments should focus on the draft EIS's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on October 3, 2019.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP17–178–000) with your submission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on the Project.

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type.

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (CP17–178–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment meetings held in the Project area to receive comments on the draft EIS. The dates, locations, and times of these meetings, along with the BLM public hearings, will be provided in a supplemental notice.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 Code of Federal Regulations Part 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Subsequent decisions, determination, permits, and authorization by the cooperating agencies are subject to the administrative procedures of each respective agency.

Questions?

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 28, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14432 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1819–021; ER10–1818–019; ER10–1817–019; ER10–1820–024.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Notice of Change in Status of Northern States Power Company, a Minnesota corporation, et al.

Filed Date: 6/28/19.

Accession Number: 20190628–5206.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER10–3077–007; ER10–3071–007; ER10–3074–007; ER10–3075–007; ER10–3076–007; ER14–1342–004; ER14–608–004; ER15–876–004; ER16–1644–004; ER17–1214–003; ER19–537–003.

Applicants: CalPeak Power LLC, CalPeak Power—Border LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, Midway Peaking, LLC, Malaga Power, LLC, MRP San Joaquin Energy, LLC, MRP Generation Holdings, LLC, High Desert Power Project, LLC, Coso Geothermal Power Holdings, LLC.

Description: Updated Market Power Analysis for the Southwest Region of CalPeak Power LLC, et al.

Filed Date: 6/28/19.

Accession Number: 20190628–5237.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER14–2939–007; ER14–2465–010; ER14–2466–010; ER15–2728–009; ER15–632–009; ER15–634–009.

Applicants: Imperial Valley Solar Company (IVSC) 2,LLC, CID Solar, LLC, RE Camelot LLC, RE Columbia Two LLC, Maricopa West Solar PV, LLC, Cottonwood Solar LLC.

Description: Triennial Market Power Analysis for the Southwest Region of the Dominion Companies.

Filed Date: 6/28/19.

Accession Number: 20190628–5234.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER16–1255–014; ER15–1579–015; ER15–1582–016; ER15–1914–017; ER15–2679–013; ER15–2680–013; ER15–760–016; ER15–762–017; ER16–1609–007; ER16–1738–011; ER16–1901–011; ER16–1955–011; ER16–1956–011; ER16–1973–011; ER16–2201–010; ER16–2224–010; ER16–2541–010; ER16–2578–011; ER16–468–011; ER16–474–012; ER16–890–012; ER17–1864–009; ER17–1871–

009; ER17–1909–009; ER17–306–010; ER17–544–010; ER18–1667–004; ER18–2327–003; ER18–2492–005; ER19–846–004; ER19–847–004.

Applicants: Antelope Big Sky Ranch LLC, Antelope DSR 1, LLC, Antelope DSR 2, LLC, Antelope DSR 3, LLC, Antelope Expansion 2, LLC, Bayshore Solar B, LLC, Bayshore Solar A, LLC, Bayshore Solar C, LLC, Beacon Solar 1, LLC, Beacon Solar 3, LLC, Beacon Solar 4, LLC, Central Antelope Dry Ranch C LLC, Elevation Solar C LLC, FTS Master Tenant 1, LLC, FTS Master Tenant 2, LLC, ID Solar 1, LLC, Latigo Wind Park, LLC, North Lancaster Ranch LLC, Pioneer Wind Park I, LLC, Riverhead Solar Farm, LLC, San Pablo Raceway, LLC, Sandstone Solar LLC, Sierra Solar Greenworks LLC, Solverde 1, LLC, Summer Solar LLC, Western Antelope Blue Sky Ranch A LLC, Western Antelope Blue Sky Ranch B LLC, Western Antelope Dry Ranch LLC, 65HK 8me LLC, 67RK 8me LLC, 87RL 8me LLC.

Description: Triennial Market Power Update for the Northwest Region of Antelope Big Sky Ranch LLC, et. al.

Filed Date: 6/28/19.

Accession Number: 20190628–5271.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–1166–000.

Applicants: ISO New England Inc.

Description: Response of ISO New England Inc. to June 6, 2019 Request for Additional Information Regarding Results of FCA 13.

Filed Date: 6/28/19.

Accession Number: 20190628–5239.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2290–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 293 Dry Lakes Pseudo-Tie Agreement to be effective 8/28/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5198.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2291–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5147; Queue No. AD1–144 (amend) to be effective 6/15/2018.

Filed Date: 6/28/19.

Accession Number: 20190628–5199.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2292–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Jul 2019 Membership Filing to be effective 6/1/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5200.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2293–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2041R9 Kansas City Board of Public Utilities PTP Agreement to be effective 9/1/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5201.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2294–000.

Applicants: Mesquite Power, LLC.

Description: Compliance filing: Updated Market Power Analysis for the SW Region & New eTariff Baseline to be effective 6/29/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5202.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–2295–000.

Applicants: Midcontinent Independent System Operator, Inc., Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: § 205(d) Rate Filing: 2019–06–28_NSP Attachment O 30.9 East River Filing to be effective 7/1/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5213.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2296–000.

Applicants: Pio Pico Energy Center, LLC.

Description: Market-Based Triennial Review Filing: Updated Market Power Analysis for the SW Region & Revised MBR Tariff to be effective 6/29/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5215.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–2297–000.

Applicants: Sierra Pacific Power Company.

Description: Tariff Cancellation: Cancellation of Rate Schedule No. 66 to be effective 8/28/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5228.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2298–000.

Applicants: Sierra Pacific Power Company.

Description: Tariff Cancellation: Cancellation of Rate Schedule No. 71 to be effective 8/28/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5230.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2299–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Reduce Number of Identical Transmission Service Requests to be effective 8/28/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5232.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2300–000.

Applicants: Georgia Power Company.

Description: § 205(d) Rate Filing: SR Arlington II Affected System Construction Agreement Filing to be effective 5/28/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5233.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2301–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to the OA, Sch. 6, sec 1.5 re: Market Efficiency Project Reevaluation to be effective 8/28/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5236.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2303–000.

Applicants: NSTAR Electric Company.

Description: § 205(d) Rate Filing: Second Supplement to Stony Brook—Ludlow Agreement to be effective 7/1/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5242.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2304–000.

Applicants: Georgia Power Company.

Description: § 205(d) Rate Filing: SR Terrell Affected System Construction Agreement Filing to be effective 5/28/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5243.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2305–000.

Applicants: Valencia Power, LLC.

Description: Compliance filing: Updated Market Power Analysis for the SW Region & New eTariff Baseline to be effective 6/29/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5246.

Comments Due: 5 p.m. ET 8/27/19.

Docket Numbers: ER19–2306–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 877—Firm Point-to-Point TSA with Energy Keepers to be effective 9/1/2019.

Filed Date: 6/28/19.

Accession Number: 20190628–5261.

Comments Due: 5 p.m. ET 7/19/19.

Docket Numbers: ER19–2307–000.

Applicants: Macquarie Energy LLC.

Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the NW Region & Revised MBR Tariff to be effective 6/29/2019.

Filed Date: 6/28/19.
Accession Number: 20190628–5262.
Comments Due: 5 p.m. ET 7/19/19.
Docket Numbers: ER19–2308–000.
Applicants: Macquarie Energy Trading LLC.
Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the NW Region & Revised MBR Tariff to be effective 6/29/2019.
Filed Date: 6/28/19.
Accession Number: 20190628–5270.
Comments Due: 5 p.m. ET 7/19/19.
Docket Numbers: ER19–2309–000.
Applicants: Utah Red Hills Renewable Park, LLC.
Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the NW Region & Revised MBR Tariff to be effective 6/29/2019.
Filed Date: 6/28/19.
Accession Number: 20190628–5272.
Comments Due: 5 p.m. ET 7/19/19.
Docket Numbers: ER19–2310–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 373, E&P Agreement to be effective 5/31/2019.
Filed Date: 6/28/19.
Accession Number: 20190628–5284.
Comments Due: 5 p.m. ET 7/19/19.
Docket Numbers: ER19–2311–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: § 205(d) Rate Filing: PASNY Tariff Standby Revisions 6–2019 to be effective 7/1/2019.
Filed Date: 7/1/19.
Accession Number: 20190701–5005.
Comments Due: 5 p.m. ET 7/22/19.
Docket Numbers: ER19–2312–000.
Applicants: ISO New England Inc.
Description: Filing of Permanent De-List Bids and Retirement De-List Bids for 2023–24 Forward Capacity Auction (FCA 14) of ISO New England, Inc.
Filed Date: 6/28/19.
Accession Number: 20190628–5287.
Comments Due: 5 p.m. ET 7/19/19.
Docket Numbers: ER19–2313–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of GSFA and GIA Service Agreement No. 58 of Pacific Gas and Electric Company.
Filed Date: 6/28/19.
Accession Number: 20190628–5292.
Comments Due: 5 p.m. ET 7/19/19.
Docket Numbers: ER19–2314–000.
Applicants: MidAmerican Central California Transco, LLC.
Description: Application to Recover Abandoned Plant Costs of MidAmerican Central California Transco, LLC.
Filed Date: 6/28/19.
Accession Number: 20190628–5293.
Comments Due: 5 p.m. ET 7/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–14425 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–481–000]

Notice of Request Under Blanket Authorization; Transcontinental Gas Pipe Line Company, LLC

Take notice that on June 21, 2019, Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP19–481–000 a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) to abandon, partially in place and partially by removal, supply lateral pipelines located in offshore federal waters near Louisiana. Specifically, Transco proposes to abandon an approximately 19.24-mile, 10-inch-diameter pipeline extending subsea from Ship Shoal Block 169 to Ship Shoal Block 87, Platform B, and an approximately 1.06-mile, 8-inch-diameter pipeline extending from Ship Shoal Block 87, Platform B to Ship Shoal Block 72 subsea tie-in (Supply Laterals).

Transco states that the abandonment of the Supply Laterals will have no impact on the daily design capacity of, or operating conditions on, Transco's pipeline system, nor will the abandonment have any adverse impact on Transco's existing customers. Additionally, Transco states that the Supply Laterals have not provided service to any customers during the previous 12 months and are not covered under a firm contract. Transco estimates the total cost of the abandonment to be approximately $2.4 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Charlotte Hutson Director, Rates & Regulatory, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251–1396, by telephone at (713) 215–4060, or by email at *charlotte.a.hutson@williams.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and

the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: June 27, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14450 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1394–080]

Southern California Edison; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 1394–080.

c. *Date Filed:* May 1, 2019.

d. *Submitted By:* Southern California Edison.

e. *Name of Project:* Bishop Creek Hydroelectric Project.

f. *Location:* On Bishop Creek in Inyo County, California. The project occupies approximately 734 acres of federal land administered by the U.S. Forest Service and approximately 48 acres of federal land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Matthew Woodhall, Project Lead, Southern California Edison Company, 1515 Walnut Grove Avenue, Rosemead, CA 91770.

i. *FERC Contact:* Kelly Wolcott at (202) 502–6480 or email at: *kelly.wolcott@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Southern California Edison, as the Commission's non-federal representatives for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Southern California Edison filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction (by appointment only) at: Bishop Creek Hydro Headquarters Office, 4000 E Bishop Creek Road, Bishop, CA 93514.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, you may send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–1394–080.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by August 29, 2019.

q. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this notice, associated scoping meeting, and our scoping process will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date and Time: Tuesday, July 30, 2019 at 7:00 p.m.

Location: City of Bishop Council Chambers, 301 West Line Street, Bishop, California 93514.

Phone Number: (760) 873–5863.

Daytime Scoping Meeting

Date and Time: Wednesday, July 31, 2019 at 9:00 a.m.

Location: City of Bishop Council Chambers, 301 West Line Street, Bishop, California 93514.

Phone Number: (760) 873–5863.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review of the project on Tuesday, July 30, 2019, starting at 8:30 a.m. All participants should meet at the Eastern Sierra College Center, located at: 4090 W. Line Street Bishop, CA 93514–7306. All participants are responsible for their own transportation. We anticipate the environmental site review will take all day, so participants are also advised to bring a bag lunch. Anyone with questions about the site visit should contact Mr. Matthew Woodhall with Southern California Edison at (626) 302–9596.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: June 27, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–14453 Filed 7–5–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9996–29–Region 2]

Proposed CERCLA Cost Recovery Settlement Regarding the PJP Landfill Superfund Site, Hudson County, New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed cost recovery settlement agreement pursuant to CERCLA between EPA and CWM Chemical Services, LLC; Edlin, Ltd; Edwin Siegel; New Jersey Department of Transportation; Roman Catholic Archdiocese of Newark; Tooley Enterprises; and Waste Management of New Jersey, Inc. (''Settling Parties'') regarding the PJP Landfill Superfund Site, Jersey City, New Jersey (''Site''). Pursuant to the proposed cost recovery settlement agreement, the Settling Parties will pay $143,088 to resolve the Settling Parties' civil liability under Section 107(a) of CERCLA for certain past response costs.

DATES: Comments must be submitted on or before August 7, 2019.

ADDRESSES: The proposed settlement agreement is available for public inspection at EPA's Region 2 offices. To request a copy of the proposed settlement agreement, please contact the EPA employee identified in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Leena Raut, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 2, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Email: *raut.leena@epa.gov.* Telephone: (212) 637–3122.

SUPPLEMENTARY INFORMATION: For 30 days following the date of publication of this notice, EPA will receive written comments concerning the proposed cost recovery settlement agreement. Comments to the proposed settlement agreement should reference the PJP Landfill Superfund Site, U.S. EPA Index No. CERCLA–02–2018–2017. EPA will consider all comments received during the 30-day public comment period and may modify or withdraw its consent to the settlement agreement if comments received disclose facts or considerations that indicate that the proposed settlement agreement is inappropriate, improper, or inadequate. EPA's response to comments will be available for public inspection at EPA's Region 2 offices located at 290 Broadway, New York, NY 10007–1866.

Dated: June 14, 2019.

Pat Evangelista,

Acting Director, Superfund and Emergency Management Division, Region 2.

[FR Doc. 2019–14467 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9995–16–0MS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support, Environmental Protection Agency (EPA).

ACTION: Notice of a New System of Records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of the Administrator is giving notice that it proposes to publish a system of records pursuant to the provisions of the Privacy Act of 1974. The Reasonable Accommodation Management System (RAMS) will support the Agency's Reasonable Accommodation program as required by the Equal Employment Opportunity Commission (EEOC) and in compliance with the requirements of Executive Order 13164. The EEOC requires federal agencies to process requests by employees for reasonable accommodations that enable a person with a disability to apply for a job, perform job duties, and/or enjoy the benefits and privileges of employment. The documentation required to process theses requests will contain personally identifiable information (PII).

DATES: Persons wishing to comment on this system of records notice must do so by August 7, 2019. If no comments are received by the end of the comment period, this system of records will become effective on August 7, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2017–0536 by one of the following methods:

Regulations.gov: www.regulations.gov. Follow the online instructions for submitting comments.

Email: oei.docket@epa.gov.

Fax: 202–566–1752.

Mail: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OEI Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2017–0536. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* website is an ''anonymous access'' system for EPA, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. Each agency determines submission requirements within their own internal processes and standards. EPA has no requirement of personal information. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Kristin Tropp, (202) 559–0006 or *Tropp.Kristin@epa.gov* and/or Amanda Sweda, (202) 566–0678 or *Sweda.Amanda@epa.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency (EPA) proposes to publish a Privacy Act system of records for the Reasonable Accommodation Management System (RAMS). The RAMS is an information management and reporting system for internal use by the National Reasonable Accommodation Program. The information collected in the RAMS is required by the Equal Employment Opportunity Commission (EEOC) under Section 501 of the Rehabilitation Act and in order for the Agency to comply with Executive Order 13164 and EEOC Management Directive 715 (MD 715). Requestors of reasonable accommodations provide information that includes PII to the National Reasonable Accommodation Coordinator (NRAC) or Assistant National Reasonable Accommodation Coordinator (ANRAC) in EPA's Office of Civil Rights (OCR), a Local Reasonable Accommodation Coordinator (LORAC), or the requestor's manager so that a determination on disability status can be made. PII contained in RAMS will include name, date of birth, medical documentation, and general categories of type of accommodation (telework, workplace modification, flexible schedule, assistive technology, interpreter services).

The NRAC, ANRAC, LORAC will have access to the records in RAMS, which can only be logged onto using the employee PIV card and passwords. The RAMS contractors provide infrastructure services including supporting hardware and software, internet gateway communications security, system administration, and system and application security services but do not collect, maintain or access the records in RAMS. The physical environment includes access restricted by on-site security and employee badge requirements for RAMS contractors.

SYSTEM NAME AND NUMBER:

Reasonable Accommodation Management System (RAMS) EPA–73.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Administrator, Office of Civil Rights, US EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20004.

SYSTEM MANAGER(S):

Amanda Sweda, (202) 566–0678 or *Sweda.Amanda@epa.gov,* National Reasonable Accommodation Coordinator, Office of Civil Rights, 1200 Pennsylvania Avenue NW, Washington, DC 20004.

Kristin Tropp, (202) 559–0006 or *Tropp.Kristin@epa.gov,* Assistant National Reasonable Accommodation Coordinator, Office of Civil Rights, 1200 Pennsylvania Avenue NW, Washington, DC 20004.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973; 501 and 504; the Americans with Disabilities Act Amendments Act of 2008 (Pub. L. 110–325 (ADAAA); Executive Order 13164 (July 28, 2000);

and Executive Order 13548 (July 26, 2010).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the RAMS is to allow EPA to collect and maintain reasonable accommodation records on applicants for employment as well as current employees who request or receive reasonable accommodation(s) from EPA under the Rehabilitation Act of 1973 and the ADAAA. These records document when and what was asked for as a reasonable accommodation and what was approved or denied as a reasonable accommodation. The records may include required medical documentation and a determination of disability letter stating whether the individual is a person with a disability. The system will also be used to track processing of requests for reasonable accommodations only to the extent necessary to ensure EPA-wide compliance with applicable laws and regulations while preserving and maintaining the confidentiality and privacy of all information provided in support of accommodation request.

The Rehabilitation Act and the ADAAA require federal agencies to provide reasonable accommodations to qualified applicants for employment and employees with disabilities if known or requested unless the accommodation would impose an undue hardship on the agency. The Rehabilitation Act requires federal agencies to provide reasonable accommodations or modifications to allow participation by persons with disabilities in agency programs or activities. Reasonable Accommodations are modifications or adjustments that will allow applicants and employees to apply for a job, perform job duties, and/or enjoy the benefits and privileges of employment. Reasonable accommodations may include: (1) Making existing facilities readily accessible to and usable by individual with disabilities; (2) job restructuring, modification of work schedules or place of work, extended leave, telecommuting, or reassignment to a vacant position; (3) acquisition or modification of equipment or devices, including computer software and hardware, appropriate adjustments or modifications of examinations, training materials or policies, the provision of qualified readers and/or interpreters, personal assistants that enable the individual to perform his or her job duties and enjoy the benefits and privileges of employment, and other similar accommodations; and/or (4) providing interpreters, large print programs, or other accommodations for EPA events or activities open to employees, applicants, and/or the public.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees and applicants for employment at the United States Environmental Protection Agency who request a reasonable accommodation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Email correspondence, determination of disability letter(s), medical information (if provided), Appendix A Applicant Confirmation of Request for RA; Appendix B Employee Confirmation of Request for RA (AFGE); Appendix B Confirmation of Request for Reasonable Accommodation Form (Non-AFGE); Appendix C Denial of Reasonable Accommodation Request Form (Non-AFGE); Appendix D RA Information Reporting (AFGE); Appendix D Reasonable Accommodation Information Reporting Form (Non-AFGE); Appendix E Limited Medical Privacy Release Form (AFGE); Appendix F Final RA Decision (AFGE); Authorization to Receive and Review Documentation for Reasonable Accommodation (Non-AFGE). Specific data elements are: Employee or applicant name, mail code address, work phone, work email address, office name, occupational series, pay grade, bargaining unit, accommodation requested, request date, determination date, determination method, explanation of method, status, decision-making official name and title, disability status, medical information request tracking data, medical information recipient name, medical information release form and related tracking data, data concerning communication of decisions, accommodation offer notification and related comments, the date that the reasonable accommodation request was made, and the status of the request.

RECORD SOURCE CATEGORIES:

Information is obtained from employees and applicants for employment who requested reasonable accommodation(s) under the Rehabilitation Act of 1973 and the ADAAA from the EPA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

EPA General routine uses A, B, C, F, I, J, K apply to this system. (73 FR 2245) The information collected in the RAMS will be used in a manner that is compatible and consistent with the purposes for which the information has been collected. Information from this system of records may be disclosed for the following EPA General routine uses (73 FR 2245):

A. Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

F. Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;

2. Any employee of the Agency in his or her official capacity;

3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or

4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is

deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

I. Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

Records may also be disclosed to:

Appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

Another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The paper records are maintained in locked file cabinets inside of a locked office located in the Office of Civil Rights, 1200 Pennsylvania Ave. NW, Washington, DC 20004. RAMS is currently hosted at a FedRAMP certified Cloud Service Provider location at the contractor's facility in Ashburn, VA 20147. Users access the RAMS system via the internet. The files stored in RAMS are accessed by the authorized users accessing RAMS content hosted on a secure external server and website from their PC client Web browsers.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the individual's name, or a case number which is assigned by the system when the request is first entered into RAMS, and office/region.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records stored in this system are subject to EPA records schedule number (EPA 0068), Reasonable accommodation Request Records. A records schedule provides mandatory instructions on how long to keep records (retention) and when they can be disposed. Reasonable accommodation records are retained until three years after an employee separates from EPA or three years after an applicant made the request if they are not hired.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Computer-stored information is protected in accordance with the Agency's Chief Information Officer (CIO) 2150.3 Environmental Protection Agency Information Security Policy and procedures.

○ Access to RAMS is limited to authorized users only. Authorized users include the NRAC, ANRAC, and LORACs. LORACs have limited access to data that is associated with their respective region or office.

○ RAMS master administrators are the NRAC and ANRAC and control user access to system functionality and data by assigning system roles and permissions. A ''permission'' is a rule that regulates which users have access to what function or data and in what manner. The Master Administrators assign each user (the LORACs) a role which determines what type of data they can access and then assigns them areas of the Agency they can see that data for. The Master Administrators limit individual access to only the information for which the individual LORAC has a need to know.

○ The RAMS contractor is a contractor to EPA that supports the RAMS information management and reporting system. The contractor is subject to the Federal Acquisition Regulations (FAR) Privacy Act clauses in its contract with EPA.

○ The RAMS contractor provides a fully managed support infrastructure service including supporting hardware and software, internet gateway communications security, system administration, and system and application security services. The RAMS contractor does not access the actual files collected and maintained by the NRAC, ANRAC, or LORACs. The physical environment includes access restricted by on-site security and employee badge requirements.

○ The system safeguards the data from access by those not authorized to access it, limiting its access to only employees who have a business need to access it and perform the duties of their assigned jobs. The system links to no other system and the data is not shared externally.

○ All physical reasonable accommodation files are kept confidential and maintained in the Office of Civil Rights, in secure, locked cabinets. Only the NRAC and ANRAC have access to these files. Employees/manager who obtain or receive such information (medical information, determination of disability letters with functional limitations described) are strictly bound by confidentiality requirements. Whenever information on an employee with a reasonable accommodation is disclosed, the individual disclosing the information must inform the recipients of their continuing confidentiality obligations.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information in this system of records about themselves are required to provide adequate identification (*e.g.,* driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the EPA National Privacy Program Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: June 5, 2019.

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2019–14469 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0289 and OMB 3060–1215]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 7, 2019. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the webpage *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0289.

Title: Section 76.76.601, Performance Tests; Section 76.1704, Proof of Performance Test Data; 76.1717, Compliance with Technical Standards.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal Government.

Number of Respondents and Responses: 1,455 respondents; 1,505 responses.

Estimated Time per Response: 1–70 hours.

Frequency of Response: Recordkeeping requirement, Semi-annual and Triennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 101,900 hours.

Total Annual Cost: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission adopted a Report and Order on April 12, 2019, In the Matter of Channel Requirements, Sections 76.1705 and 76.1700(a)(4), Modernization of Media Regulation Initiative, MB Docket No. 18–92, MB Docket No. 17–105, FCC 19–33. In this Report and Order, the information collection requirement contained in 47 CFR 76.105 was eliminated. The Commission felt that it was an unnecessary requirement which pertains to cable operators' channel lineups. Section 76.1705, which requires cable operators to maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers. This requirement is unnecessary as channel lineups are readily available to consumers through a variety of other means. In FCC 19–33, the Commission continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

The information collection requirements approved under this collection remain the same and are as follows:

47 CFR 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (*e.g.,* 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (*i.e.,* employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a)(3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (*e.g.,* 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

Note 1 to 47 CFR 76.601 states prior to additional testing pursuant to Section 76.601(c), the local franchising authority shall notify the cable operator, who will then be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

47 CFR 76.1704 requires that proof of performance test required by 47 CFR 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof of performance test recordkeeping requirement in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR 76.601(d).

47 CFR 76.1717 states that an operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

OMB Control Number: 3060–1215.

Title: Use of Spectrum Bands Above 24 GHz for Mobile Radio Services.

Form Number: N/A.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 1,230 respondents; 1,230 responses.

Estimated Time per Response: .5–10 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement; upon commencement of service, or within 3 years of effective date of rules; and at end of license term, or 2024 for incumbent licensees.

Obligation to Respond: Statutory authority for this collection are contained in sections 1, 2, 3, 4, 5, 7, 10, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 160, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, 336, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

Total Annual Burden: 735 hours.

Total Annual Cost: $540,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission adopted the Use of Spectrum Bands Above 24 GHz for Mobile Radio services in a Fifth Report and Order (''Fifth R&O''), GN Docket No. 14–177, FCC 19–30, on April 15, 2019. In the Fifth R&O, the Commission amended Section 25.136 by revising the section heading and revising paragraphs (e), (f), and (g) and adding paragraphs (e)(1), (2), (3), and (4)(i), (ii), (iii), and (iv). The Commission added the 50 GHz band (50.4–51.4 GHz) to the bands that are subject to the framework for sharing between the Upper Microwave Flexible Use Service (UMFUS) and the Fixed-Satellite Service (FSS) established in that rule. In turn, since the rules now apply in additional bands, the number of respondents, the annual number of responses, annual burden hours and annual costs will increase for this collection. In addition, the Commission re-orders the paragraphs in § 25.136.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–14443 Filed 7–5–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, July 11, 2019 At 10 a.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Internet Ad Disclaimers Rulemaking Proposal for REG 2011–02 (Internet Communication Disclaimers and Definition of ''Public Communication'')
Draft Advisory Opinion 2019–08: Omar2020
Draft Advisory Opinion 2019–09: Mad Dog PAC
Draft Advisory Opinion 2019–12: Area 1 Security, Inc.
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Acting Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2019–14636 Filed 7–3–19; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Wintrust Financial Corporation, Rosemont, Illinois;* to acquire 100 percent of the voting shares of STC Bancshares Corp., and thereby indirectly acquire STC Capital Bank, both of St. Charles, Illinois.

Board of Governors of the Federal Reserve System, July 2, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–14433 Filed 7–5–19; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0302; Docket No. 2019–0001; Sequence No. 5]

Submission for OMB Review; General Services Administration Acquisition Regulation; Modifications 552.238–81

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement regarding the Modifications clause.

DATES: Submit comments on or before: August 7, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, Procurement Analyst, General Services Acquisition Policy Division, GSA, 202–357–9652 or email *dana.bowman@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0302, Modifications,'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0302, Modifications.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0302, Modifications,'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0302, Modifications.

Instructions: Please submit comments only and cite Information Collection 3090–0302, Modifications, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration Acquisition Regulation (GSAR) clause 552.238–81 Modifications requires vendors to request a contract modification by submitting a request to the Contracting Officer for approval, except for electronic File updates. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

B. Annual Reporting Burden

Respondents: 14,376.
Responses per Respondent: 2.
Total Responses: 28,752.
Hours per Response: 3.5.
Total Burden Hours: 100,632.

C. Public Comments

A notice published in the **Federal Register** at 84 FR 14376 on April 10, 2019. No comments were received. Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this

collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405; telephone 202–501–4755. Please cite OMB Control No. 3090–0302,''Modifications'' in all correspondence.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–14423 Filed 7–5–19; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee program.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards.

Date and Times:

Tuesday, August 6, 2019: 9 a.m.–5:30 p.m. (EDT)

Wednesday, August 7, 2019: 8:30 a.m.–3 p.m. (EDT)

Place: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Rm. 705–A, Washington, DC 20201.

Status: Open.

There will be an opportunity for public comment at the end of the second day of the meeting.

Purpose: The NCVHS Charter calls for the Committee to ''Study the issues related to the adoption of uniform data standards for patient medical record information and the electronic exchange of such information and report to the Secretary of Health and Human Services (HHS) recommendations and legislative proposals for such standards and electronic exchange.'' Further, the Committee is to ''Advise the Department on health data collection needs and strategies; review and monitor the Department's data and information systems to identify needs, opportunities, and problems.'' Terminologies and vocabularies are also a dimension of the Committee's charge as part of advising the Secretary and reporting to Congress on adoption of standards under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (HIPAA).

Through the Subcommittee on Standards, the Committee conducted a comprehensive environmental scan of the state of health terminologies and vocabularies in the US. The environmental scan findings are detailed in the Report, ''Health Terminologies and Vocabularies Environmental Scan'' completed in September 2018.[i] The Committee also hosted an expert roundtable meeting in July 2018 to review and comment on the environmental scan and to discuss current challenges and future adoption needs and pathways.[ii]

Based on this work, developing recommendations to the Secretary regarding adoption and use of the new version of the International Classification of Diseases (ICD–11) in the US is one of the near-term areas of obligation identified by the Committee for focus in 2019. The World Health Organization (WHO) released ICD–11 in June 2018 so countries could preview and begin their planning. In May 2019, the World Health Assembly voted to approve adoption of ICD–11 with an effective date of January 1, 2022. ICD–11 is intended by the WHO for use for both mortality (*i.e.,* cause of death) reporting and morbidity (*i.e.,* diseases) reporting.

The goal of this expert roundtable meeting is to identify research questions to inform evaluation of the benefit and cost of transition from ICD–10 to ICD–11 for mortality and morbidity. Specific meeting objectives include:

- Developing a shared understanding of lessons from the ICD–10 planning process/transition and the differences between ICD–10 and ICD–11.
- Reaching consensus on the research questions to be answered to inform evaluation of cost and benefit of transition from ICD–10 to ICD–11 for mortality and morbidity—and to identify impacts of not moving to ICD–11 for morbidity.
- Identifying key topics and messages to communicate to the industry to foster early stakeholder engagement and preparation for the transition to ICD–11.

The times and topics for this meeting are subject to change. Please refer to the posted agenda at *www.ncvhs.hhs.gov* for updates.

Contact Persons for More Information: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the NCVHS website: *www.ncvhs.hhs.gov,* where further information including a meeting agenda and instructions to access the live broadcast of the meeting will be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

Sharon Arnold,

Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2019–14375 Filed 7–5–19; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, July 9, 2019, 1:00 p.m. to 5:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850, which was published in the **Federal Register** on May 13, 2019, 84 FR 20900.

The meeting notice is amended to change the SRO from Dr. Robert Bird to Dr. Caron Lyman. The meeting name was also changed from UE4/U24 Review to UE5/U24 Review. The meeting is closed to the public.

Dated: July 1, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14382 Filed 7–5–19; 8:45 am]

BILLING CODE 4140–01–P

[i] NCVHS Health Terminologies and Vocabularies Environmental Scan. *https://ncvhs.hhs.gov/wp-content/uploads/2018/10/Report-Health-Terminologies-and-Vocabularies-Environmental-Scan.pdf.*

[ii] NCVHS The Health Terminologies and Vocabularies Expert Roundtable Meeting Summary, July 17–18, 2018. *https://ncvhs.hhs.gov/wp-content/uploads/2018/09/Report-Health-Terminologies-and-Vocabularies-Expert-Roundtable-Report.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Career Development Awards.

Date: July 22, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: July 1, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14377 Filed 7–5–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Member Conflict SEP.

Date: July 31, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 1, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14381 Filed 7–5–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed).

Date: August 6–8, 2019.

Time: 9:00 a.m. to 1:00 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Amir E. Zeituni, Ph.D., Scientific Review Program, Division of Extramural Activities, SRP, RM 3G51, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20852–9823, 301–496–2550, *amir.zeituni@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14383 Filed 7–5–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders K.

Date: July 9–10, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shanta Rajaram, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 1, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–14378 Filed 7–5–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *http://www.samhsa.gov/workplace.*

FOR FURTHER INFORMATION CONTACT: Charles LoDico, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N02C, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920)

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226.

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories).

Desert Tox, LLC, 10221 North 32nd Street Suite J, Phoenix, AZ 85028, 602–457–5411.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Charles P. LoDico,

Chemist.

[FR Doc. 2019–14418 Filed 7–5–19; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

[DHS–2019–0028]

Support Anti-Terrorism by Fostering Effective Technologies Act (SAFETY Act)

AGENCY: Science and Technology Directorate (S&T), Department of Homeland Security (DHS).

ACTION: 30-Day Notice of Information Collection; Request for comment. (Extension of a Currently Approved Collection, 1640–0001).

SUMMARY: S&T will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The DHS S&T currently has approval to collect information using the forms: Registration of a Seller as an Anti-Terrorism Technology (DHS Form 10010), Request for a Pre-application Consultation (DHS Form 10009), Notice of License of Qualified Anti-Terrorism Technology (DHS Form 10003), Notice of Modification of Qualified Anti-Terrorism Technology (DHS Form 10002), Application for Transfer of SAFETY Act Designation and Certification (DHS Form 10001), Application for Renewal Of SAFETY Act Protections of a Qualified Anti-Terrorism Technology (DHS Form 10057), Application for SAFETY Act Developmental Testing and Evaluation Designation (DHS Form 10006), Application for SAFETY Act Designation (DHS Form 10008), Application for SAFETY Act Certification (DHS Form 10007), SAFETY Act Block Designation Application (DHS Form 10005), and SAFETY Act Block Certification Application (DHS Form 10004) until June 30, 2019 with OMB approval number 1640–0001. The information collection activity will determine if a technology merits SAFETY Act protections. The information requested in the collection instruments are necessary to address not only the criteria and conditions for SAFETY Act Designation and Certification, but also to address other items of note that may be necessary for the Secretary, or their Designee to make their decision.

DATES: Comments are encouraged and accepted until August 7, 2019.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer, via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: DHS/S&T/OCIO Program Manager: Bruce Davidson, *bruce.davidson@HQ.DHS.GOV* or 202–254–5729 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The SAFETY Act Program collects this information in order to evaluate anti-terrorism technologies, based on the economic and technical criteria contained in the Regulations Implementing the Support Anti-Terrorism by Fostering Effective Technologies Act (6 U.S.C. 441), for protection in accordance with the Act, and therefore encourage the development and deployment of innovative anti-terrorism products and services. The SAFETY Act enacted as part of the Homeland Security Act of 2002, Public Law 107–296. The program provides legal liability protections for providers of qualified anti-terrorism technologies. The collected information is used by S&T to facilitate the evaluation of SAFETY Act applications received from any person, firm, or other entity that provides an anti-terrorism technology. S&T provides a secure website, accessible through *www.SAFETYAct.gov,* through which the public may submit the information collection, however; the public has the option of providing the information via hardcopy forms that via mail to the program office. The data collection forms have standardized the collection of information that is both necessary and essential for DHS. The Act applies to a broad range of technologies, including products, services, and software, or combinations thereof.

DHS, in accordance with the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. DHS is soliciting comments on the proposed Information Collection Request (ICR) that is described below. DHS is especially interested in public comment addressing the following issues: (1) Is

this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology? Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Support Anti-Terrorism by Fostering Effective Technologies Act (SAFETY Act) forms include: DHS Form 10010, DHS Form 10009, DHS Form 10008, DHS Form 10007, DHS Form 10006, DHS Form 10005, DHS Form 10004, DHS Form 10003, DHS Form 10002, DHS Form 10001, DHS Form 100057.

Prior OMB Control Number: 1640–0016.

*Prior **Federal Register** Document:* 2019–0010, April 5, 2019.

Type of Review: An extension of an information collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Frequency of Collection: One per Request.

Estimated Time per Respondent: 18.2 minutes or under.

Number of Respondents: 665.

Total Burden Hours: 3,325.

Dated: June 10, 2019.

Gregg Piermarini,

Acting Chief Information Officer, Science and Technology Directorate.

[FR Doc. 2019–14041 Filed 7–5–19; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6133–N–02]

Notice of HUD Vacant Loan Sales (HVLS 2019–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of reverse mortgage loans.

SUMMARY: This notice announces HUD's intention to competitively offer multiple residential reverse mortgage pools consisting of approximately 1,500 reverse mortgage notes secured by properties with a loan balance of approximately $330 million. The sale will consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid. This is the third sale offering of its type and the sale will be held on July 24, 2019.

DATES: For this sale action, the Bidder's Information Package (BIP) is expected to be made available to qualified bidders on or about June 21, 2019. Bids for the HVLS 2019–2 sale will be accepted on the Bid Date of July 24, 2019 (Bid Date). HUD anticipates that award(s) will be made on or about July 24, 2019 (the Award Date).

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available via the HUD website at: *http://www.hud.gov/sfloansales* or via: *http://www.verdiassetsales.com*. Please mail and fax executed documents to Verdi Consulting, Inc.: Verdi Consulting, Inc., 8400 Westpark Drive, 4th Floor, McLean, VA 22102, Attention: HUD SFLS Loan Sale Coordinator, Fax: 1–703–584–7790.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in HVLS 2019–2 due and payable Secretary-held reverse mortgage loans. The loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

A listing of the mortgage loans is included in the due diligence materials made available to qualified bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the mortgage loans. The loans are expected to be offered in regional pools, with one pool in Puerto Rico set-aside for bidding by qualified non-profit or unit of local government entities only. Qualified non-profit or unit of local government bidders will also have the opportunity to bid on up to 10% of the loans in five of the larger regional pools.

The Bidding Process

The BIP describes in detail the procedure for bidding in HVLS 2019–2. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement for HVLS 2019–2 (CAA). Qualified bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each qualified bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a qualified bidder is successful, the qualified bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders.

This notice provides some of the basic terms of sale. The CAA, which is included in the BIP, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA are not subject to negotiation.

Due Diligence Review

The BIP describes how qualified bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove mortgage loans from HVLS 2019–2 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, and include any reverse mortgage loans in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer, approximately 30 to 45 days after the Award Date.

The HVLS 2019–2 reverse mortgage loans were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the mortgage loans for this specific sale transaction. For HVLS 2019–2, HUD has determined that this method of sale optimizes HUD's return on the sale of these loans, affords the greatest opportunity for all qualified bidders to

bid on the mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the mortgage loans.

Bidder Ineligibility

In order to bid in HVLS 2019–2 as a qualified bidder, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement, including any applicable nonprofit or unit of local government addendum, acceptable to HUD. In the Qualification Statement, the prospective bidder must provide certain representations and warranties regarding the prospective bidder, including but not limited to (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or sub-contractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the ''Related Entities''), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans included in HVLS 2019–2 if the prospective bidder, its Related Entities or its repurchase lenders, is any of the following, unless other exceptions apply as provided for the in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state or local government agency, division or department;

4. An entity that has had its right to act as a Government National Mortgage Association (''Ginnie Mae'') issuer terminated and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a Conveyance, Assignment and Assumption Agreement executed for any previous mortgage loan sale of HUD;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 10 to assist in preparing any of its bids on the mortgage loans;

10. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid, or

(b) is any principal of any entity or individual described in the preceding sentence;

(c) any employee or subcontractor of such entity or individual during that six-month period; or

(d) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan. Qualified non-profit or unit of local government bidders seeking to participate in the nonprofit and government pools or sub-pools, which includes bidding on 10% of the loans from the larger regional pools, must satisfy additional qualification requirements that are set forth in a separate addendum to the Qualification Statement. Such bidders must complete the addendum and submit it with the Qualification Statement in order to bid on any nonprofit and government pools or sub-pools.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2019–2, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2019–2, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HVLS 2019–2 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: July 2, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–14465 Filed 7–5–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–29]

60-Day Notice of Proposed Information Collection: Generic Customer Satisfaction Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 6, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Generic Customer Satisfaction Surveys.

OMB Approval Number: 2535–0116.

Type of Request: Extension on a currently approved.

Form Number: None.

Description of the need for the information and proposed use: Executive Order 12862, ''Setting Customer Service Standards'' requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services. The surveys covered in the request for a generic clearance will provide HUD a means to gather this data directly from our customers. HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind and quality of services and products they want and expect to receive.

Estimated Number of Respondents: 117,248.

Estimated Number of Responses: 117,248.

Frequency of Response: 1.

Average Hours per Response: 0.80.

Total Estimated Burden: 13,229.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 26, 2019.

Colette Pollard,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2019–14464 Filed 7–5–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL06000 L58210000.EU0000 241A; N–89337; N–94524; N–94525; MO #4500132140]

Notice of Realty Action: Proposed Competitive Sale in White Pine County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer, by competitive sale, three parcels of public land totaling 431.53 acres in White Pine County, Nevada, pursuant to the White Pine County Conservation, Recreation, and Development Act of 2006 (WPCCRDA). The sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended and the BLM land sale regulations. Public lands must sell at not less than the appraised fair market values (FMV).

DATES: Submit written comments to the BLM at the address below. The BLM must receive the comments on or before August 22, 2019. The sale, by sealed-bid and oral public auction will be held on Thursday, September 5, 2019, at 1:00 p.m., Pacific Time at White Pine County Library, 950 Campton Street, Ely, Nevada 89301. The BLM will start accepting sealed-bids beginning August 22, 2019. Sealed-bids must be received at the BLM, Bristlecone Field Office no later than 4:30 p.m., Pacific Time on August 29, 2019. The BLM will open sealed-bids on the day of the sale, just prior to the oral bidding.

ADDRESSES:

- *Mail written comments, submit sealed-bids and obtain forms at:* Bristlecone Field Office, 702 N Industrial Way, Ely, NV 89301.
- *Sale Location:* White Pine County Library, 950 Campton Street, Ely, Nevada 89301.
- *Certificate of Eligibility forms are also available at the BLM website at: https://www.blm.gov/documents/nevada/frequently-requested/data/certificate-eligibility.*
- *Registration forms are available at: https://www.blm.gov/services/electronic-forms.*

FOR FURTHER INFORMATION CONTACT: Susan Grande, Realty Specialist, Ely District Office, 702 North Industrial Way, Ely, Nevada 89301, by telephone at 775–289–1809, or by email at *sgrande@blm.gov*; or Mindy Seal, Field

Manager, Bristlecone Field Office, at 775–289–1800, or by email at *mseal@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to conduct a Competitive Sale for three parcels of public land in White Pine County, Nevada, described as follows: Mount Diablo Meridian, Nevada.

Parcel in McGill, NV

N–89337
T. 17 N, R. 64 E,
Sec. 7, E½SW¼ and SE¼.
The area described contains 240 acres.

Parcels in Ely, NV

N–94524
T. 17 N, R. 63 E,
Sec. 22, NW¼SW¼ and SW¼SW¼.
The area described contains 80 acres.
N–94525
T. 16 N, R. 63 E,
Sec. 26, lots 6 and 8;
Sec. 35, lot 4, E½NW¼NW¼, E½SW¼NW¼, and SE¼NW¼.
The area described contains 111.53 acres.

Upon publication of this Notice in the **Federal Register**, the sale parcels will be segregated from all forms of appropriation under the public land laws, except for the sale provisions of FLPMA. Upon publication and until completion of the sale, the BLM will no longer accept land use applications affecting the identified public lands, except applications for the amendment of previously filed rights-of-way (ROW) applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregated effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on July 8, 2021, unless extended by the BLM Nevada State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

The sale parcels meet the disposal criteria consistent with Section 203 of FLPMA and the BLM Ely District Record of Decision and Approved Resource Management Plan (ROD/RMP) dated August 20, 2008 (Lands and Realty objectives LR–8, page 66; and Appendix B, page B–1). An Environmental Assessment NV–L060–2018–0002 was prepared and a Decision Record signed on August 29, 2018. All documents, including a map and the summary of appraisals for the sale, are available for review at the BLM Ely District Office.

FLPMA Section 209, 43 U.S.C. 1719(a), states that ''all conveyances of title issued by the Secretary . . . shall reserve to the United States all minerals in the lands.'' The BLM prepared mineral potential reports dated May 31, 2018 (N–89337), July 11, 2018 (N–94524), and June 22, 2018 (N–94525). Based on these reports, BLM concluded that no significant mineral resource value, reserved to the United States, will be affected by the disposal of these parcels. These parcels are not required for any Federal purposes and their disposal is in the public interest and meets the intent of the WPCCRDA.

Both WPCCRDA and FLPMA express a preference that disposal of public lands take place through a competitive bidding process. In accordance with 43 CFR 2710.0–6(c)(3)(i), a competitive sale of public land may be used where ''there would be a number of interested parties bidding for the lands and (A) wherever in the judgment of the authorized officer the lands are accessible and usable regardless of adjoining land ownership and (B) wherever the lands are within a developing or urbanizing area and land values are increasing due to their location and interest on the competitive market.''

Competitive Sale Procedures as Prescribed by 43 CFR 2711.3–1

Sales Procedures: Registration for oral bidding will begin at 1:00 p.m., Pacific Time at the White Pine County Library, 950 Campton Street, Ely, Nevada 89301, on the day of the sale. There will be no prior registration before the sale date. For competitive bidding, the FMV will determine the beginning point of oral bidding for each parcel. The public sale auction will be through sealed and oral bids. To determine the high bids among the qualified bids received, the sealed-bids must be received prior to the hour stated in the Notice. The highest bid above FMV of the sealed-bids will set the starting point for oral bidding on a parcel. The sale parcels that receives no bids will begin at the established FMV. Bidders who are participating and attending the oral auction on the day of the sale are not required to submit a sealed-bid but may choose to do so.

Sealed-bid envelopes must be clearly marked on the lower front left corner with the parcel number and name of the sale, for example: ''N–XXXXX, 3-parcel WPCCRDA Land Sale 2018.'' Sealed-bids must include an amount not less than 20 percent of the total bid amount by certified check, bank draft, cashier's check, or United States postal money order made payable in United States dollars to the ''Department of the Interior—Bureau of Land Management.'' The BLM will not accept personal or company checks. The sealed-bid envelope *must* contain the deposit and a completed and signed ''Certificate of Eligibility'' form stating the name, mailing address, and telephone number of the entity or person submitting the bid. Certificate of Eligibility and registration forms are available at the BLM Bristlecone Field Office at the address listed in the **ADDRESSES** section and on the BLM website at: *https://www.blm.gov/documents/nevada/frequently-requested/data/certificate-eligibility* and *https://www.blm.gov/services/electronic-forms.* Pursuant to 43 CFR 2711.3–1(c), if two or more sealed-bid envelopes contain valid bids of the same amount, the bidders will be notified via phone or in person to submit another bid within ten minutes or to withdraw their original bid. The highest qualifying sealed-bid will be publicly declared in accordance with 43 CFR 2711.3–1(d). Oral bidding will start at the highest sealed-bid amount. Bids for less than the federally approved FMV will not be qualified.

Acceptance or rejection of any offer(s) to purchase will be in accordance with the procedures set forth in 43 CFR 2711.3–1(f) and (g). All bid deposits submitted with unsuccessful bids will be returned to the bidders or their authorized representative upon presentation of acceptable photo identification at the BLM–CFO, or by certified mail. If a high bidder is unable to consummate the transaction for any reason, the second highest bidder may be considered to purchase the parcel. If there are no acceptable bids, a parcel may remain available for sale at a future date in accordance with competitive sale procedures without further legal Notice.

Bid Deposits and Payment

The BLM's authorized officer will declare the high bidder. In accordance with 43 CFR 2711.3–1(d), the high bidder shall submit their bid deposit to the ''Department of the Interior—Bureau of Land Management'', according to bid deposit procedures stated previously. The high bidder shall submit the deposit by 4:00 p.m., Pacific Time on the day of the sale to the BLM, Collections Officers at BLM, Ely District Office, 702 North Industrial Way, Ely, NV 89301. Failure to submit the 20 percent deposit following the close of the sale under 43 CFR 2711.3–1(d) will result in forfeiture of the parcel. No

contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

In accordance with 43 CFR 2711.3–1(d), ''The successful bidder . . . shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale.'' Failure to pay the full purchase price within 180 days of the sale will result in forfeiture of the bid deposit. No exceptions will be made. The BLM cannot accept the remainder of the bid price at any time following the 180th day after the sale.

Arrangements for electronic fund transfer to the BLM shall be made a minimum of two weeks prior to final payment. Failure to meet conditions established for this sale will void the sale and any funds received will be forfeited.

In order to qualify for a Federal conveyance of title, as set forth in 43 CFR 2711.2, the conveyee must be: (1) A citizen of the United States 18 years of age or older; (2) A corporation subject to the laws of any state or of the United States; (3) A state, state instrumentality, or political subdivision authorized to hold property; or (4) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of Nevada. Evidence of United States citizenship is a birth certificate, passport, or naturalization papers. The high bidder must submit proof of citizenship within 25 days from receipt of the high-bidder letter. Citizenship documents and Articles of Incorporation (as applicable) must be provided to the BLM–EYDO for each sale. The public land will not be offered for sale prior to 60 days from the date this Notice is published in the **Federal Register.** The patents, if issued, would be subject to the following terms, conditions, and reservations:

1. A reservation for any rights-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. A reservation for all mineral deposits in the land so patented, and to it, or person authorized by it, the right to prospect for, mine, or remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights;

3. The parcels are subject to valid existing rights; and

4. By accepting this patent, the purchasers/patentees agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (a) Violations of Federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (b) Judgments, claims or demands of any kind assessed against the United States; (c) Costs, expenses, or damages of any kind incurred by the United States; (d) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (e) Other activities by which solid waste or hazardous substances or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (f) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction.

No representation, warranty, or covenant of any kind, express or implied, is given or made by the United States, its officers or employees, as to title, access to or from the above described parcels of land, the title of the land, whether or to what extent the land may be developed, its physical condition, or past, present or future uses, and the conveyance of any such parcel will not be on a contingency basis. The buyer is responsible to be aware of all applicable Federal, state, and local government policies and regulations that would affect the subject lands. It is the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Lands without access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The parcels may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Encumbrances of record, appearing in the case file are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday at the Bristlecone Field Office, except during federally recognized holidays.

The parcels are subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any ROW within the parcels will be given the opportunity to amend the ROW for conversion to a new term, including perpetuity, if applicable, or to an easement.

The BLM will notify valid existing ROW holders of their ability to convert their complaint ROW to perpetual ROW or easements. Each valid holder will be notified in writing of their rights and then must apply for the conversion of their current authorization.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the Bristlecone Field Office 30 days before the scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the Bristlecone Field Office 30 days from the date of the high bidder letter by 4:00 p.m. Pacific Standard Time. Name changes will not be accepted after that date. To submit a name change, the high bidder must submit the name change on the Certificate of Eligibility form to the BLM, Bristlecone Field Office in writing. Certificate of Eligibility forms are available at the Bristlecone Field Office and at the BLM website at: *https://www.blm.gov/documents/nevada/frequently-requested/data/certificate-eligibility.*

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Service regulations. The BLM is not a party to any 1031 Exchange.

In order to determine the FMV through appraisal, certain extraordinary assumptions and hypothetical conditions are made concerning the attributes and limitations of the land and potential effects of local regulations

and policies on potential future land uses. Through publication of this Notice, the BLM advises that these assumptions may not be endorsed or approved by units of local Government.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

Only written comments will be considered properly filed.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personnel identifying information from public review, we cannot guarantee that we will be able to do so.

Any comments regarding the land sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2(a) and (c).

Peter McFadden,

District Manager.

[FR Doc. 2019–14466 Filed 7–5–19; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

Miscellaneous Tariff Bill (MTB) Petition System; Submission of Petition and Comment Forms for OMB Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The International Trade Commission has submitted request for approval of a questionnaire to the Office of Management and Budget. This notice is being given pursuant to the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents may be obtained from Jennifer Rohrbach, USITC Miscellaneous Tariff Bill Program Manager, Office of Operations (*jennifer.rohrbach@usitc.gov* or 202–205–2088). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the form is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Keith Vaughn, Chief Information Officer, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Purpose of Information Collection: The information requested by these forms is for use by the Commission in connection with collecting petitions for temporary duty suspensions or reductions (''petitions'') submitted under the American Manufacturing Competitiveness Act of 2016, 19 U.S.C. 1332 note (''the Act''), and public comments on petitions filed under the Act. Section 3 of the Act establishes a process for the submission and consideration of petitions and public comments for duty suspensions and reductions for imported goods in the Harmonized Tariff Schedule of the United States. The petition submission period for this cycle is 60 days starting not later than October 15, 2019.

Summary of Proposal:

(1) *Number of forms submitted:* 2.

(2) *Title of forms:* MTB Petition System: Petition Submission Information Form and MTB Petition System: Comment Submission Information Form.

(3) *Type of request:* New.

(4) *Frequency of use:* Once.

(5) *Description of affected industry:* Domestic firms.

(6) *Estimated number of petitioners and commenters:* Up to 7,000 petitions; 5,000 comments.

(7) *Estimated total number of hours to complete the form:* 8 hours for compiling information and submitting petitions and 2 hours to draft and submit comments.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission.

By order of the Commission.

Issued: July 2, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–14458 Filed 7–5–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1081]

Certain LED Lighting Devices, LED Power Supplies, and Components Thereof; Commission's Final Determination of No Violation of Section 337 by the Participating Respondents, and Final Determination of a Violation of Section 337 by a Defaulted Respondent; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, as amended, by participating respondents Feit Electric Company, Inc. of Pico Rivera, California and Feit Electric Company, Inc. (China) of Xiamen, China (together, ''Feit''); Lowe's Companies, Inc. of Mooresville, North Carolina and L G Sourcing, Inc. of North Wilkesboro, North Carolina (together, ''Lowe's''); and Satco Products, Inc. of Brentwood, New York (''Satco''). The Commission has found a violation of section 337 by defaulting respondent MSi Lighting, Inc. of Boca Raton, Florida (''MSi Lighting''), and has determined to issue a limited exclusion order and a cease and desist order against that respondent. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 8, 2017, based on a complaint filed by complainants Philips Lighting North America Corp. and Philips Lighting Holding B.V. (together, ''Complainants''). 82 FR 51872. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale after importation within the United States after importation of certain LED devices, LED power supplies, and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 6,586,890 (''the '890 patent''); 7,038,399 (''the '399 patent''); 7,256,554 (''the '554 patent''); 7,262,559 (''the '559 patent''); and 8,070,328 (''the '328 patent''). *Id.* The notice of investigation named the following respondents: Edgewell Personal Care Brands, LLC of Shelton, Connecticut (''Edgewell''); Feit; Lowe's; MSi Lighting; Satco; Topaz Lighting Corp. of Holtsville, New York (''Topaz''); and Wangs Alliance Corporation d/b/a/WAC Lighting Co. of Port Washington, New York, and WAC Lighting (Shanghai) Co. Ltd. of Shanghai, China (together, ''WAC''). *Id.* The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission subsequently terminated the investigation with respect to Topaz and WAC based on settlement agreements. Order No. 9 (Jan. 8, 2018), *not reviewed,* Notice (Jan. 16, 2018); Order No. 42 (May 2, 2018), *not reviewed,* Notice (May 18, 2018). The Commission also found MSi Lighting in default for failing to respond to the complaint and notice of investigation. Order No. 20 (Jan. 31, 2018), *not reviewed,* Notice (Feb. 26, 2018). Additionally, the Commission amended the notice of investigation to remove respondent Edgewell, which was not named in the complaint but was erroneously included in the notice of investigation. Notice (Aug. 6, 2018). Accordingly, at the time of the final ID, the remaining participating respondents were Feit, Lowe's, and Satco (collectively, ''Respondents'').

The Commission also terminated the investigation based on a partial withdrawal of the complaint with respect to the entire '328 patent, the entire '890 patent, certain claims of the '399 patent, and certain claims of the '554 patent. Order No. 44 (May 22, 2018), *not reviewed,* Notice (June 11, 2018); Order No. 53 (June 28, 2018), *not reviewed,* Notice (July 24, 2018). At the time of the final ID, Complainants asserted that Respondents infringed claims 7, 8, 17–19, 34, and 35 of the '399 patent and claims 6 and 12 of the '559 patent, and that Lowe's infringed claims 1, 2, 5–7, and 12 of the '554 patent. ID at 64, 84.

The ALJ also issued a summary determination that Complainants showed that its eW Cove Powercore device satisfied the technical prong of the domestic industry requirement with respect to claims 1, 2, 5–7 and 12 of the '554 patent. Order No. 55 (Aug. 1, 2018), *not reviewed,* Notice (Aug. 17, 2018).

On December 19, 2018, the ALJ issued the final ID finding a violation of section 337 with respect to the '399 patent, but no violation of section 337 with respect to the '554 and '559 patents. The ID found, *inter alia,* that: Respondents' products infringe claims 7, 8, and 17–19 of the '399 patent; that certain Lowe's products infringed claims 1, 2, 5, 6, 7, and 12 of the '554 patent but were not shown to be imported or sold by a named respondent; that no products were shown to infringe the '559 patent; that no asserted claim was shown to be invalid; and that Complainants showed a domestic industry with respect to all three remaining asserted patents.

On April 12, 2019, the Commission determined to review the following issues:

1. The ID's infringement findings for the ''controller'' limitation of recited in claims 7 and 8 of the '399 patent, and the ID's infringement findings for the ''adjustment circuit'' limitation recited in claims 17–19 of the '399 patent;

2. the ID's findings regarding whether products are representative of other products with respect to its infringement findings for claims 17–19 of the '399 patent and for claims 6 and 12 of the '559 patent; and

3. the ID's findings on the economic prong of the domestic industry requirement.

Notice, 84 FR 16280–82 (Apr. 18, 2019). The Commission also sought briefing on whether the record shows that the accused products satisfy the ''controller'' and ''adjustment circuit'' limitations of the '399 patent, as well as briefing on remedy, the public interest, and bonding. *Id.* at 16282. The Commission received written submissions from Complainants and Respondents on April 26, 2019, and reply written submissions from Complainants and Respondent on May 3, 2019. The Commission also received submissions on remedy and the public interest from Good Earth Lighting, Inc.; Evolution Lighting, LLC; American Lighting, Inc.; Jiawei Technology (USA) Ltd.; Blue Sky Wireless, LLC; GE Lighting; and Litex Industries, Ltd.

Having examined the record of this investigation, including the ALJ's final ID, the petitions, responses, and other submissions from the parties and the public, the Commission has determined that Complainants have not proven a violation of section 337 by Respondents. Specifically, the Commission has determined that Complainants failed to show that any accused product satisfies the ''controller'' limitation of claims 7 and 8 of the '399 patent and failed to show that any accused product satisfies the ''adjustment circuit'' limitation of the claims 17–19 of the '399 patent. Consequently, the Commission finds that Complainants failed to establish that any of Respondents' accused products infringes any claim of the '399 patent. The Commission further finds that Complainants failed to show that any of Respondents' accused products is representative of any other accused product. Finally, the Commission has determined to take no position on the ID's findings that Complainants satisfied the economic prong of the domestic industry requirement through investments under section 337(a)(3)(A) and (B) with respect to the '399 patent, and the ID's findings that Complainants satisfied the economic prong of the domestic industry requirement through investments under section 337(a)(3)(C) with respect to the '554 patent.

With respect to defaulted respondent MSi Lighting, Complainants request a remedy only with respect to the '399 patent. Under section 337(g)(1) (19 U.S.C. 1337(g)(1)), the Commission presumes that the allegations in the complaint are true, including the allegations that MSi Lighting infringes claims 1, 2, 4, and 5 of the '399 patent and that Complainants satisfied the domestic industry requirement with respect to the '399 patent. The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order and a cease and desist order prohibiting MSi Lighting from importing, selling, offering for sale, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors of imported LED devices, LED power supplies, and components that infringe claims 1, 2, 4, and 5 of the '399 patent. *Id.* The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not

preclude the issuance of the limited exclusion order and cease and desist order. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of three percent of the entered value of the imported subject articles of MSi Lighting.

The parties also have several pending motions and requests. On February 6, 2019, Complainants moved to amend the complaint and notice of investigation to reflect a corporate name change, as Philips Lighting North American Corporation changed its name to Signify North America Corporation and Philips Lighting Holding B.V. changed its name to Signify Holding B.V. No party opposed the motion. The Commission grants Complainants' motion for good cause shown. The term ''Complainants'' refers to both Signify North America Corporation and Signify Holding B.V., as well as their previous names, Philips Lighting North American Corporation and Philips Lighting Holding B.V.

On May 7, 2019, Respondents filed a letter stating that Complainants inappropriately attached a version of an expert witness statement that contains stricken material and that was not admitted into evidence. The Commission clarifies that it has relied upon only the version of the expert witness statement that was admitted into evidence.

On May 23, 2019, Respondents filed a letter requesting to conduct post-hearing discovery concerning alleged perjury based on statements that occurred nine months earlier during the evidentiary hearing on August 20, 2018. On May 31, 2019, Complainants filed a letter in response. The Commission denies Respondents' tardy request for post-hearing discovery for failure to establish an adequate basis for their requested relief.

Accordingly, the Commission has determined that Complainants have failed to show a violation of section 337 by Respondents with respect to the '399, '559, and '554 patents. The Commission has also determined to issue a limited exclusion order and a cease and desist order against MSi Lighting pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)). The Commission's determinations are explained more fully in the accompanying Opinion. All other findings in the ID under review that are consistent with the Commission's determinations are affirmed.

The Commission's notice, orders, and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).By order of the Commission.

Issued: July 1, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–14406 Filed 7–5–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; United States Victims of State Sponsored Terrorism Fund Application Form

AGENCY: Criminal Division, U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The U.S. Department of Justice, Criminal Division, United States Victims of State Sponsored Terrorism Fund, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 6, 2019.

FOR FURTHER INFORMATION CONTACT: Additional comments especially on the estimated public burden or associated response time, suggestions, or need for a copy of the proposed information collection instrument with instructions, or additional information, should be directed to either the Special Master, United States Victims of State Sponsored Terrorism Fund, or the Chief, Program Management and Training Unit, Money Laundering and Asset Recovery Section, Criminal Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530–0001, telephone (202) 353–2046.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Application Form for the U.S. Victims of State Sponsored Terrorism Fund.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: N/A. The U.S. Victims of State Sponsored Terrorism Fund, U.S. Department of Justice, Criminal Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

The U.S. Victims of State Sponsored Terrorism Fund (''USVSST Fund'') was established to provide compensation to certain individuals who were injured as a result of acts of international terrorism by a state sponsor of terrorism. Under the Justice for United States Victims of State Sponsored Terrorism Act (''Act''), 34 U.S.C. 20144(c), an eligible claimant is (1) a U.S. person, as defined in 34 U.S.C. 20144(j)(8), with a final judgment issued by a U.S. district court under state or federal law against a state sponsor of terrorism and arising from an act of international terrorism, for which the foreign state was found not immune under provisions of the Foreign Sovereign Immunities Act, codified at 28 U.S.C. 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008); (2) a U.S. person, as defined in 34 U.S.C. 20144(j)(8), who was taken and held hostage from the United States Embassy in Tehran, Iran, during the

period beginning November 4, 1979, and ending January 20, 1981, or the spouse and child of that U.S. person at that time, and who is also identified as a member of the proposed class in case number 1:00–CV–03110 (EGS) of the United States District Court for the District of Columbia; or (3) the personal representative of a deceased individual in either of those two categories.

The information collected from the USVSST Fund's Application Form will be used to determine whether applicants are eligible for compensation from the USVSST Fund, and if so, the amount of compensation to be awarded. The Application Form consists of parts related to eligibility and compensation. The eligibility parts seek the information required by the Act to determine whether a claimant is eligible for payment from the USVSST Fund, including information related to: Participation in federal lawsuits against a state sponsor of terrorism under the Foreign Sovereign Immunities Act; being taken and held hostage at the U.S. Embassy in Tehran, Iran, from the period beginning November 4, 1979, and ending January 20, 1981; or being spouses and children of such hostages. The compensation parts seek the information required by the Justice for Victims of State Sponsored Terrorism Act to determine the amount of compensation for which the claimant is eligible. Specifically, the compensation parts seek information regarding any payments from sources other than the USVSST Fund that the claimant received, is entitled to receive, or is scheduled to receive, as a result of the act of international terrorism by a state sponsor of terrorism and the amount of compensatory damages awarded the claimant in a final judgment.

5. *An estimate of the total number of applicants and the amount of time estimated for an average applicant to respond:* It is estimated that 700 respondents may complete the Application Form. It is estimated that respondents will complete the paper form or the electronic form in an average of 1.5 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,050 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405A, Washington, DC 20530.

Dated: July 1, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–14380 Filed 7–5–19; 8:45 am]

BILLING CODE 4410–14–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet telephonically on July 15, 2019. The meeting will commence at 3 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW, Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- *Call toll-free number:* 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Discussion with LSC Management regarding recommendations for LSC's Fiscal year 2021 budget request
   - Jim Sandman, President
   - Carol Bergman, Vice President for Government Relations & Public Affairs
3. Discussion with the LSC Inspector General regarding OIG's Fiscal Year 2021 budget request
   - Jeffery Schanz, Inspector General
   - David Maddox, Assistant Inspector General for Management and Evaluation
4. Public comment
5. Consider and act on other business
6. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting.

If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 3, 2019.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2019–14515 Filed 7–3–19; 11:15 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 19–CRB–0009 AA]

Determination and Allocation of Initial Administrative Assessment To Fund Mechanical Licensing Collective

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of Initial Administrative Assessment proceeding and requesting Petitions to Participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine the initial administrative assessment that digital music providers and any significant nonblanket licensees must pay to fund the operations of the Mechanical Licensing Collective. The Judges also set the date by which the Mechanical Licensing Collective and the Digital Licensee Coordinator must, and other eligible participants may, file a Petition to Participate and the accompanying $150 filing fee. A rule relating to the Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective is published elsewhere in this issue of the **Federal Register**.

DATES: Petitions to Participate and the filing fee are due on or before July 23, 2019.

ADDRESSES: Each Petition to Participate must include the proceeding docket number, 19–CRB–0009 IAA. Participants must file using the *online form* on the CRB's electronic filing application, eCRB, at *https://app.crb.gov/,* unless they do not have access to the internet, in which case they may file using any of the following methods:

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Unless submitting online, claimants must submit an original, two paper copies, and an electronic version on a CD. All submissions must include the Copyright Royalty Board name and docket number. All submissions received will be posted without change on eCRB including any personal information provided.

Docket: For access to the docket, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/,* and search for docket number 19–CRB–0009 AA.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: The Copyright Royalty Judges (Judges) have promulgated regulations (published elsewhere in this issue of the **Federal Register**) governing new proceedings to determine the reasonableness of, and allocate responsibility to fund, the operating budget of the Mechanical Licensing Collective (MLC), as directed by the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA), Public Law 115–264, 132 Stat. 3676 (Oct. 11, 2018). 17 U.S.C. 115(d)(7)(D)(vii) and 801(b)(8) (2018). The result of the first such proceeding will be a determination by the Judges of an Initial Administrative Assessment that digital music providers and any significant nonblanket licensees must pay to fund the operations of the MLC. *See* 37 CFR 355.2(a), 355.6 (Jul. 8, 2019).[1] Section 355.2(a) requires the Judges to commence the first proceeding no later than July 8, 2019, by publication of a notice in the **Federal Register** seeking Petitions to Participate. The regulations require the participation of the MLC and the Digital Licensee Coordinator (DLC) in the proceeding and permit the participation of copyright owners, digital music providers, and significant nonblanket licensees. 37 CFR 355.2(c)–(d).

The Judges hereby announce commencement of the proceeding, direct the MLC and the DLC to file Petitions to Participate, and request Petitions to Participate from any other eligible participant with a significant interest in the determination of the Initial Administrative Assessment.

Petitions To Participate

Parties filing Petitions to Participate must comply with the requirements of § 355.2(e) of the Judges' regulations.

How To Submit Petitions To Participate

Petitioners must submit a filing fee of $150 to the Copyright Royalty Board with their Petition to Participate, or the Judges will reject the petition. THE COPYRIGHT ROYALTY BOARD WILL NOT ACCEPT CASH.

Parties filing online through eCRB must fill out an online form (instead of filing a document) and pay the filing fee, if applicable, by credit card using the payment portal on eCRB. Any party without access to the internet must pay the filing fee by check or money order made payable to the ''Copyright Royalty Board'' and mailed or delivered with its filed paper documents and CD as described in the **ADDRESSES** section above. If a check is returned for lack of sufficient funds, the Judges will dismiss the corresponding Petition to Participate.

Any participant that is an individual may represent herself or himself. All other participants must be represented by counsel. In accordance with § 303.2 of the Judges' regulations, only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges.

The Judges will address further procedural matters, including scheduling, after receiving Petitions to Participate. 37 CFR 355(g)(1).

Dated: June 27, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2019–14090 Filed 7–5–19; 8:45 am]

BILLING CODE 1410–72–P

[1] All citations to the Judges regulations in this notice are to new or amended regulations that are published in this issue of the **Federal Register**.

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the Committee on Strategy of the National Science Board, to be held Friday, July 12, 2019 from 4–5 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's opening remarks; Discuss initial development of NSF's Fiscal Year 2021 budget submission to the Office of Management and Budget.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Kathy Jacquart, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: (703) 292–7000.

You may find meeting information and updates (time, place, subject matter or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2019–14540 Filed 7–3–19; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's ad hoc Committee on Nominating the NSB Class of 2018–2024, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5

U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: July 12, 2019 from 12:30–2:30 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's welcome and remarks: Development of recommended candidate slate of the NSB 2020–2026 term for presentation to the full Board.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Brad Gutierrez, *bgutierr@nsf.gov,* 703–292–7000. Meeting information and updates may be found at *http://www.nsf.gov/nsb/notices.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2019–14541 Filed 7–3–19; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

665th Meeting of the Advisory Committee on Reactor Safeguards (ACRS); Revised

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on July 10–12, 2019, Two White Flint North, 11545 Rockville Pike, ACRS Conference Room T2D10, Rockville, MD 20852.

Wednesday, July 10, 2019, Conference Room T2D10

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–12:00 p.m.: NuScale Design Certification Application Chapters 3, 6, 15, 20 and Stability Topical Report (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and NuScale regarding the subject chapters and stability topical report. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

1:00 p.m.–3:00 p.m.: NuScale Design Certification Application Chapters 3, 6, 15, 20 and Stability Topical Report (continued) (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff and NuScale regarding the subject chapters and stability topical report. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

3:15 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Thursday, July 11, 2019, Conference Room T2D10

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Retreat (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

10:15 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

Friday, July 12, 2019, Conference Room T2D10

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on December 7, 2018 (83 FR 26506). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant

ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Ms. Paula Dorm, ACRS Audio Visual Technician (301–415–7799), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: July 1, 2019.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2019–14398 Filed 7–5–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17; NRC–2017–0178]

Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Special Nuclear Materials (SNM) License SNM–2509 for the Trojan Nuclear Plant Independent Spent Fuel Storage Installation (ISFSI) (Trojan ISFSI) located in Columbia County, Oregon. The NRC has prepared an environmental assessment (EA) for this proposed license renewal in accordance with its regulations. Based on the EA, the NRC has concluded that a finding of no significant impact (FONSI) is appropriate. The NRC also is conducting a safety evaluation of the proposed license renewal.

DATES: The EA and FONSI referenced in this document are available on July 8, 2019.

ADDRESSES: Please refer to Docket ID NRC–2017–0178 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2017–0178. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867, email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering a license renewal request for SNM–2509 for the Trojan specifically-licensed ISFSI located in Columbia County, Oregon (ADAMS Accession No. ML17086A039). The applicant, Portland General Electric Company (PGE), is requesting to renew license SNM–2509 for the Trojan ISFSI for an additional 40-year period. The current license expired on March 31, 2019. PGE submitted the license renewal application in accordance with paragraphs 72.42(b) and (c) of title 10 of the *Code of Federal Regulations* (10 CFR). Accordingly, the NRC considers the license in timely renewal. If approved, PGE would be able to continue to possess and store spent nuclear fuel at the Trojan ISFSI in accordance with the requirements in 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''

The NRC staff has prepared a final EA as part of its review of this license renewal request in accordance with the requirements of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the final EA, the NRC has determined that an environmental impact statement (EIS) is not required for this proposed action and a FONSI is appropriate. The NRC is also conducting a safety evaluation of the proposed license amendment pursuant to 10 CFR part 72 and the results will be documented in a separate Safety Evaluation Report (SER). If PGE's request is approved, the NRC will issue the license renewal following publication of this final EA

and FONSI and the SER in the **Federal Register**.

II. Final Environmental Assessment Summary

PGE is requesting to renew the Trojan specifically-licensed ISFSI for a 40-year period. The NRC has assessed the potential environmental impacts of the proposed action and alternatives to the proposed action, including license renewal for an additional 20-year term, shipment of spent fuel to an offsite facility, and the no-action alternative. The results of the NRC's environmental review can be found in the final EA (ADAMS Accession No. ML19058A264). The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. In conducting the environmental review, the NRC considered information in the license renewal application; communications and consultation with the Oregon State Historic Preservation Office; the Chehalis, Grand Ronde, and Yakama Native American Tribes; the Portland Field Office of the U.S. Fish and Wildlife Service; and the Oregon Health Authority.

Approval of PGE's proposed license renewal request would allow the 34 Holtec International Multipurpose Canisters to continue to remain in the Trojan ISFSI for an additional 40 years. Specifically, the estimated annual dose to the nearest potential member of the public from ISFSI activities is 0.023 mSv/yr (2.3 mrem/yr) (PGE, 2017a), which is below the 0.25 mSv/yr (25 mrem/yr) limit specified in 10 CFR 72.104(a) and the 1 mSv/yr (100 mrem/yr) limit in 10 CFR 20.1301(a)(1). Furthermore, PGE maintains a radiation protection program for the ISFSI in accordance with 10 CFR part 20 to ensure that radiation doses are as low as is reasonable achievable (ALARA). Accordingly, no significant radiological or non-radiological impacts are expected to result from approval of the license renewal request, and the proposed action would not significantly contribute to cumulative impacts at the Trojan site. Additionally, there would be no disproportionately high and adverse impacts on minority and low-income populations.

In its license renewal request, PGE is proposing no changes in how it handles or stores spent fuel at the Trojan ISFSI. Approval of the proposed action would not result in any new construction or expansion of the existing ISFSI footprint beyond that previously approved. The ISFSI is a largely passive facility that produces no liquid or gaseous effluents. No significant radiological or nonradiological impacts are expected from continued normal operations. Occupational dose estimates associated with the proposed action and continued normal operation and maintenance of the ISFSI are expected to be at ALARA levels and within the limits of 10 CFR 20.1201. Therefore, the NRC staff has determined that pursuant to 10 CFR 51.31, preparation of an EIS is not required for the proposed action, and pursuant to 10 CFR 51.32, a FONSI is appropriate.

Furthermore, the NRC staff determined that this license renewal request does not have the potential to cause effects on historic properties, assuming those were present; therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the National Historic Preservation Act. The NRC staff, however, reached out to and informed the Oregon State Historic Preservation Officer (SHPO) via letter dated August 17, 2017 (ADAMS Accession No. ML17214A072) and the Chehalis, Grand Ronde and Yakama Native American Tribes of its determination via letters dated August 29, 2017 (ADAMS Accession Nos. ML17219A064, ML17219A065, and ML17219A066, respectively). The Grand Ronde tribe responded that there are recorded cultural resources in the vicinity of the Trojan ISFSI (ADAMS Accession No. ML17284A237); however, NRC staff expects there to be no impact to these resources as the licensee has no plans for construction activities and routine operations are largely passive. The NRC staff also consulted with the U.S. Fish and Wildlife Service (FWS) in accordance with Section 7 of the Endangered Species Act.

III. Finding of No Significant Impact

Based on its review of the proposed action in the EA, in accordance with the requirements in 10 CFR part 51, the NRC has concluded that the proposed action, renewal of NRC Special Nuclear Materials License No. SNM–2509 for the Trojan ISFSI located in Columbia County, Oregon, will not significantly affect the quality of the human environment. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, that preparation of an EIS is not required for the proposed action and a finding of no significant impacts is appropriate.

Dated at Rockville, Maryland, this 1st day of July 2019.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Acting Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–14397 Filed 7–5–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0139]

Expiration Term for Certificates of Compliance for Transportation Packages

AGENCY: Nuclear Regulatory Commission.

ACTION: Basis document; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is noticing the availability of the ''Basis Document for Expiration Term for Certificates of Compliance for Transportation Packages'' (Basis Document). The Basis Document details the NRC's analysis and development of a programmatic basis for the 5-year expiration term for certificates of compliance for transportation packages.

DATES: The basis document is available on July 8, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0139 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0139. Address questions about docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Basis Document, ''Basis Document for Expiration Term for Certificates of Compliance for Transportation Packages,'' and the OIG audit report, ''OIG–17–A–21, Audit of NRC's

Oversight for Issuing Certificates of Compliance for Radioactive Material Packages,'' are available in ADAMS under Accession Nos. ML19140A059 and ML17228A217, respectively.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7900, email: *Torre.Taylor@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of the Inspector General (OIG) conducted an audit of the NRC's oversight of issuing certificates of compliance for radioactive material packages and spent fuel storage casks. The OIG documented its findings in a report entitled, OIG–17–A–21, ''Audit of NRC's Oversight for Issuing Certificates of Compliance for Radioactive Material Packages,'' dated August 16, 2017. The OIG recommended, in part, that the NRC staff conduct an analysis to develop a regulatory and technical basis for the expiration term for the certificates of compliance for transportation packages.

II. Discussion

Certificates of compliance are issued pursuant to title 10 of the *Code of Federal Regulations,* part 71, ''Packaging and Transportation of Radioactive Material.'' The current 5-year expiration term for these certificates was not established by rule, but by agency practice, and the 5-year term was not documented in a technical evaluation. In response to OIG's recommendation, the NRC conducted an analysis of the regulatory and technical bases for the expiration term for certificates of compliance and documented its conclusions in the Basis Document. The Basis Document provides the NRC's analysis, including reviews of the NRC's statutory authority, regulations, agency guidance, and current process for review of applications for transportation package design approvals. The NRC also included information on its evaluation of expiration terms in other NRC program areas in which certificates are issued, stakeholder interactions, the impact of changing expiration terms for transportation certificates of compliance related to foreign competent authorities, and factors to consider in the NRC's evaluation.

The NRC has determined that, absent a request from a vendor for a different term, a 5-year expiration term is appropriate for certificates of compliance for transportation packages, and has documented this determination in a Basis Document. As is further explained in the Basis Document, a longer expiration term could provide equivalent protection for public health and safety, and could potentially save some burden for some NRC certificate holders. The NRC has determined, however, that the efficiency in maintaining consistency between NRC, U.S. Department of Transportation, and foreign competent authority expiration dates in certificates outweighs any burden saved. Moreover, NRC regulations afford flexibility in selecting an appropriate term and certificate holders may request a longer renewal term on a case-by-case basis, with appropriate supporting documentation.

Dated at Rockville, Maryland, this 2nd day of July 2019.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 2019–14463 Filed 7–5–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0049]

Information Collection: Security Acknowledgment and Termination Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Security Acknowledgment and Termination Statement.''

DATES: Submit comments by August 7, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–XXXX), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0049 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0049. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0049 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19165A243. The supporting statement and Security Acknowledgment and Termination Statement are available in ADAMS under ADAMS Accession No. ML19165A245.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your

comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Security Acknowledgment and Termination Statement.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 8, 2019 (84 FR 13976).

1. *The title of the information collection:* Security Acknowledgment and Termination Statement.

2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number if applicable:* NRC Form 176.

5. *How often the collection is required or requested:* On Occasion.

6. *Who will be required or asked to respond:* NRC Employees, Licensees and contractors.

7. *The estimated number of annual responses:* 400.

8. *The estimated number of annual respondents:* 400.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 80.

10. *Abstract:* The NRC Form 176, ''Security Acknowledgment and Termination Statement'' is completed by employees, licensees and contractors in connection with the termination of their access authorization/security clearance granted by the NRC and to acknowledgment and accept their continuing security responsibility.

Dated at Rockville, Maryland, this 2nd day of July 2019.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–14448 Filed 7–5–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0023]

Qualification and Training of Personnel for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 4 to Regulatory Guide (RG) 1.8, ''Qualification and Training of Personnel for Nuclear Power Plants.'' This RG describes methods acceptable to the NRC staff for complying with those portions of the Commission's regulations associated with the selection, qualifications, and training for nuclear power plant personnel. Revision 4 updates the RG with additional experience gained since Revision 3 was issued in 2000 by endorsing American National Standards Institute/American Nuclear Society (ANSI/ANS)-3.1–2014, ''Selection, Qualification, and Training of Personnel for Nuclear Power Plants,'' with exceptions and clarifications.

DATES: Revision 4 to RG 1.8 is available on July 8, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0023 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2018–0023. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Revision 4 to RG 1.8 and the regulatory analysis may be found in ADAMS under Accession Nos. ML19101A395 and ML16091A271, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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FOR FURTHER INFORMATION CONTACT: Brian Tindell, Office of Nuclear Reactor Regulation, telephone: 301–415–2026, email: *Brian.Tindell@nrc.gov* and Steve Burton, Office of Nuclear Regulatory Research, telephone: 301–415–0038, email: *Stephen.Burton@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 4 of RG 1.8 was issued with a temporary identification of Draft Regulatory Guide, DG–1329. This revision updates the RG with additional experience gained through inspections since Revision 3 was issued in 2000. It endorses American National Standards Institute/American Nuclear Society (ANSI/ANS)-3.1–2014, ''Selection, Qualification, and Training of Personnel for Nuclear Power Plants,'' with certain exceptions and clarifications that are listed in the Staff Regulatory Guidance section of the RG.

II. Additional Information

The NRC published a notice of the availability of DG–1329 in the **Federal Register** on February 12, 2018 (83 FR 6053), for a 60-day public comment period. The public comment period closed on April 13, 2018. Public comments on DG–1329 and the staff responses to the public comments are

available under ADAMS Accession No. ML19101A396.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the U.S. Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

This RG describes methods acceptable to the staff of the NRC for complying with those portions of the Commission's regulations associated with the selection, qualifications, and training for nuclear power plant personnel. Issuance of this RG does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of the RG, the NRC has no intention to impose this RG on holders of operating licenses or combined licenses.

This RG may be applied to applications for operating licenses, combined licenses, early site permits, and certified design rules docketed by the NRC as of the date of issuance of the RG, as well as future applications submitted after the issuance of the RG. Such action would not constitute backfitting as defined in the Backfit Rule or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 2nd day of July 2019.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2019–14441 Filed 7–5–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of July 8, 15, 22, 29, August 5, 12, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 8, 2019

There are no meetings scheduled for the week of July 8, 2019.

Week of July 15, 2019—Tentative

There are no meetings scheduled for the week of July 15, 2019.

Week of July 22, 2019—Tentative

There are no meetings scheduled for the week of July 22, 2019.

Week of July 29, 2019—Tentative

There are no meetings scheduled for the week of July 29, 2019.

Week of August 5, 2019—Tentative

There are no meetings scheduled for the week of August 5, 2019.

Week of August 12, 2019—Tentative

Wednesday, August 14, 2019

9:00 a.m. Hearing on Early Site Permit for the Clinch River Nuclear Site: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Mallecia Sutton: 301–415–0673)

This hearing will be webcast live at the Web address—*http://www.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 3rd day of July 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–14537 Filed 7–3–19; 4:15 pm]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 1:30 p.m., July 16, 2019.

PLACE: 8th Floor Board Conference Room, 844 North Rush Street, Chicago, Illinois 60611.

STATUS: The initial part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

(1) Albany Office recommendations/alternatives

(2) Status update from Wisconsin Central Working Group

(3) Status update from Office of Legislative Affairs on the state of the budget

(4) Procedure for submitting items for the Board Docket

Portions Closed to the Public

(1) Status update on internal personnel matter

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Dated: July 2, 2019.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2019–14501 Filed 7–3–19; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86259; File No. SR–ICEEU–2019–003]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Revise the ICE Clear Europe Clearing Rules Regarding Default Management, Recovery and Wind-Down for CDS Contracts, and Default Auction Procedures

July 1, 2019.

I. Introduction

On April 29, 2019, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to modify certain provisions of the ICE Clear Europe Clearing Rules (''Rules'') and clearing procedures relating to default management, Clearing House recovery and wind-down for CDS Contracts, and to adopt certain related default auction procedures for CDS Contracts (''CDS Default Auction Procedures'').[3] The proposed rule change was published in the **Federal Register** on May 17, 2019.[4] The Commission did not receive comments on the proposed rule change. On June 5, 2019, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comment on Amendment No. 1 from interested persons and, for the reasons discussed below, is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The proposed rule change would amend the Rules relating to Clearing House default management tools and steps, including by adopting the CDS Default Auction Procedures and clarifying the governance regarding the use of default management tools and steps. Related to ICE Clear Europe's default management tools, the proposed rule change would clarify the requirements and uses of ICE Clear Europe's Guaranty Fund. Moreover, the proposed rule change would, for CDS Contracts, establish a cooling-off period, modify the requirements regarding withdrawal by CDS clearing members, and modify the requirements regarding clearing service termination. Finally, the proposed rule change would make certain other clarifications and improvements to the Rules described below.

A. Revisions To Default Management Tools and Steps

i. Introduction

In general, the amendments would apply to the CDS Contract Category certain existing default management, recovery, and wind-down rules that currently apply only to the F&O Contract Category.[6] Thus, under the proposed rule change, instead of responding to a CDS Clearing Member default through the use of forced allocation, as required under ICE Clear Europe's current rules applicable to the CDS Contract Categories, ICE Clear Europe would be permitted to use default auctions, reduced gains distribution, and partial tear-up. The proposed rule change would also harmonize the default management tools across the F&O and CDS Contract Categories to ensure that such tools are utilized consistently across the different categories and, for the purpose of consistency with the proposed changes described herein, make clarifying and conforming changes, add new defined terms, and update current definitions and cross-references throughout the Rules. The proposed rule change would effect these changes by revising Rule 905, which establishes the overall default management tools and procedures available to the Clearing House to terminate and close out contracts of a Defaulter. In addition, because it is being replaced by the new default management tools described below, the proposed rule change would also remove existing Rule 905(c), which currently allows ICE Clear Europe to make a forced allocation of positions in the Defaulter's portfolio.

ii. Initial CDS Auctions

In the event of a clearing member default, proposed revised Rule 905(b)(i) would permit ICE Clear Europe to run one or more Initial CDS Auctions for the CDS Contract Category with respect to the remaining portfolio of the Defaulter.[7]

ICE Clear Europe would conduct Initial CDS Auctions in accordance with Part 1 of the new CDS Default Auction Procedures. The CDS Default Auction Procedures would allow ICE Clear Europe to break the portfolio of the Defaulter into one or more lots, each of which would be auctioned separately. CDS Clearing Members would be required to bid for each lot in a minimum amount to be determined by ICE Clear Europe pursuant to the requirements set forth in the CDS Default Auction Procedures. The CDS Default Auction Procedures would permit a CDS Clearing Member to transfer or outsource its minimum bid requirement to an affiliated CDS Clearing Member, and similarly would permit a CDS Clearing Member to aggregate its own minimum bid requirement with that of its affiliated CDS Clearing Members. The CDS Default Auction Procedures would not apply a minimum bid requirement where the bid would be in breach of applicable law or the Rules, such as if a self-referencing CDS Contract would arise from an accepted bid, or where ICE Clear Europe, after written notification that a minimum bid requirement is inappropriate in the current circumstances, reasonably determines that the requirement should not apply.

The CDS Default Auction Procedures would permit Customers of CDS Clearing Members (including a Sponsored Principal invited by ICE Clear Europe to participate in an Initial CDS Auction) to bid, either directly or indirectly through a CDS Clearing Member. If bidding directly in an auction, the CDS Default Auction Procedures would require that the Customer (in this instance, a ''Direct Participating Customer''): (i) Confirm a Clearing Member will clear any of its resulting transactions; (ii) deposit a minimum of €7.5 million (which would generally be applied by ICE Clear Europe in the same manner as CDS

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms used but not defined herein have the meanings specified in the Rules, clearing procedures, or CDS Default Auction Procedures.

[4] Securities Exchange Act Release No. 34–85848 (May 13, 2019), 84 FR 22530 (May 17, 2019) (SR–ICEEU–2019–003) (''Notice'').

[5] ICE Clear Europe filed Amendment No. 1 to add a confidential Exhibit 3 to the filing associated with the proposed rule change. Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change.

[6] ICE Clear Europe adopted its rules relating to Clearing House recovery and wind-down for the F&O and FX Contract Categories in 2014. *See* Exchange Act Release No. 71450 (Jan. 31, 2014), 79 FR 7250 (Feb. 6, 2014) (SR–ICEEU–2014–03) (''F&O Recovery Rule Amendments''). After adoption of the F&O Recovery Rule Amendments, certain provisions of ICE Clear Europe's rules continued to apply to CDS Contracts as they were in effect prior to the adoption of the F&O Recovery Rule Amendments. The proposed rule change would eliminate these provisions currently applicable only to CDS Contracts and CDS Clearing Members, and instead, the Rules would generally apply to CDS Clearing Members in the same way as they apply to F&O Clearing Members.

[7] *See* Notice, 84 FR at 22531.

Clearing Members' Guaranty Fund Contributions, including being subject to ''juniorization,'' as described below); and (iii) enter into an agreement with ICE Clear Europe pursuant to which the Direct Participating Customer would agree to the auction terms and confidentiality requirements as they apply to Direct Participating Customers.

The CDS Default Auction Procedures would require that the auction for each lot would be conducted as a modified Dutch auction. This would mean that, where there were multiple winning bidders, all would pay or receive the auction clearing price. If an auction for any lot or lots failed, as determined in accordance with the default auction procedures, the CDS Default Auction Procedures would allow ICE Clear Europe to conduct subsequent auctions, provided certain criteria set forth in the CDS Default Auction Procedures were met.

Under Rule 908, all available default resources (including pre-funded CDS Guaranty Fund Contributions of CDS Clearing Members, assessment contributions of CDS Clearing Members, and ICE Clear Europe contributions to the CDS Guaranty Fund) could be used to pay the cost of an Initial CDS Auction.

A portion of each CDS Clearing Member's Guaranty Fund Contributions would be allocated to the auction cost of each lot. Proposed Rule 908(i) would subject the Guaranty Fund and Assessment Contributions of non-defaulting CDS Clearing Members to ''juniorization'' using a defined default auction priority set out in the CDS Default Auction Procedures based on the competitiveness of their bids. Specifically, the proposed approach would divide the CDS Guaranty Fund into three tranches, with the lowest tranche used first to pay for any remaining default costs after an auction. This lowest tranche would consist of contributions of CDS Clearing Members that failed to participate or failed to bid in the required amount in the relevant auction. The second, or subordinate, tranche would include contributions of CDS Clearing Members whose bids were less competitive than a defined threshold, as set forth in proposed Rule 908(i), based on the auction clearing price. The final, or senior, tranche would include contributions of CDS Clearing Members whose bids would be competitive as compared to a second defined threshold, also as set forth in proposed Rule 908(i). For CDS Clearing Members who bid in the band between the two thresholds, the CDS Default Auction Procedures would allocate contributions between the senior and subordinate tranches based on a specified formula. Thus, ICE Clear Europe would pay remaining default costs after an auction first by using contributions of CDS Clearing Members who fail to bid, then by using contributions of those who bid uncompetitively, and finally, if necessary, by using contributions by those who bid competitively. Under the CDS Default Auction Procedures, the same juniorization approach would apply to assessment contributions from CDS Clearing Members and the required minimum deposit made by a Clearing Member when Direct Participating Customers bid in an auction.

iii. Secondary CDS Auction

If one or more Initial CDS Auctions were not fully successful in closing out the defaulting CDS Clearing Member's CDS portfolio, proposed Rule 905(d)(i)(B) and the CDS Default Auction Procedures would permit ICE Clear Europe to conduct a Secondary CDS Auction with respect to the Defaulter's remaining portfolio.[8]

In that event, the Secondary CDS Auction would be conducted pursuant to Part 2 of the CDS Default Auction Procedures. The Secondary CDS Auction would use the same modified Dutch auction format used for Initial CDS Auctions, with all winning bidders paying or receiving the auction clearing price. Under the CDS Default Auction Procedures, a Secondary CDS Auction for a specific lot would be deemed successful if it resulted in a price for the lot that was within ICE Clear Europe's remaining CDS default resources available for the lot. Direct Participating Customers would be permitted to participate in Secondary CDS Auctions under the same conditions as Initial CDS Auctions, with one exception. Unlike in an Initial CDS Auction, A Direct Participating Customer in a Secondary CDS Auction could bid directly without need for a minimum deposit.

Under proposed revised Rule 908(i), in the case of a Secondary CDS Auction, ICE Clear Europe would apply all remaining CDS default resources. ICE Clear Europe would subject Guaranty Fund and Assessment Contributions of non-defaulting CDS Clearing Members, to the extent remaining, to ''juniorization'' in a Secondary CDS Auction, similar to that described above for initial default auctions, in accordance with the secondary auction priority set forth in the CDS Default Auction Procedures.

If a Secondary CDS Auction is unsuccessful for any lot, the CDS Default Auction Procedures would permit ICE Clear Europe to run another Secondary CDS Auction for that lot, and to repeat this process as necessary. Pursuant to proposed Rule 914(o), however, if ICE Clear Europe invokes reduced gains distributions, the last attempt at a Secondary CDS Auction (if needed) would occur on the last day of the five-business-day reduced gains distribution period. On that last day, the Secondary CDS Auction for each lot would be successful if it results in a price that is within the default resources for such lot. ICE Clear Europe would also be able to determine, for a Secondary CDS Auction on that last day, that an auction for a lot would be partially filled. With respect to any lot that is not successfully auctioned, in whole or in part, ICE Clear Europe would be permitted to proceed to partial tear-up under Rule 915, as described below.

iv. F&O Default Auction

The proposed rule change would also clarify in Rule 908(b)–(d) that, where a Default Auction is held in respect of the F&O Contract Category, any applicable juniorization approach (made by modifying Rule 908) would be set out by the Clearing House by Circular.[9] The proposed rule change would make certain other drafting clarifications, corrections, and conforming changes to Rule 908 as well. The proposed rule change would also amend Rule 908(f) to eliminate the requirement that ICE Clear Europe provide notice of relevant default amount calculations to all affected Clearing Members via publication of a Circular, and instead allow ICE Clear Europe to notify affected Clearing Members through means that ICE Clear Europe deems appropriate under the facts and circumstances at the time. This change is intended to allow ICE Clear Europe greater flexibility with respect to the manner of notice to affected Clearing Members in what could be quickly changing circumstances.

v. Partial Tear-Up

The proposed rule change would add partial tear-up as an additional default remedy for all Contract Categories, with one difference between CDS and F&O Contracts.[10] ICE Clear Europe would be permitted to use partial tear-up for F&O Contracts immediately after a failed Default Auction, but would be able to use partial tear-up for CDS Contracts

[8] *See* Notice, 84 FR at 22532.

[9] *See* Notice, 84 FR at 22532.

[10] *See* Notice, 84 FR at 22532.

only after a failed Secondary CDS Auction.

Pursuant to proposed Rule 915(b), in a partial tear-up, ICE Clear Europe would terminate positions of non-defaulting Clearing Members and Sponsored Principals that exactly offset those in the Defaulter's remaining portfolio, that is, positions in the identical contracts and in the same aggregate notional amount (''Tear-Up Positions''). ICE Clear Europe would terminate Tear-Up Positions of all non-defaulting Clearing Members and Sponsored Principals that have such positions, on a pro rata basis, across both house and customer origin accounts. Within the customer origin account of a non-defaulting Clearing Member, Tear-Up Positions of customers would be terminated on a pro rata basis. Where ICE Clear Europe has entered into hedging transactions relating to the defaulter's positions that would not be subject to tear-up, ICE Clear Europe could, at its discretion, offer to assign or transfer those transactions to Clearing Members with related Tear-Up Positions.

ICE Clear Europe would determine a termination price for all Tear-Up Positions in accordance with proposed Rule 915(f). For CDS Contracts, the termination price would be the last established end-of-day mark-to-market settlement price. For F&O Contracts, the termination price would be the last established exchange end-of-day settlement price, subject to a specified fallback price procedure. Under proposed Rule 915(c), ICE Clear Europe would set out in a published Circular the date and time as of which partial tear-up would occur. For the CDS Contract Category, tear-up would occur contemporaneously with the determination of the termination price at end of day. Accordingly, the termination price would equal the current mark-to-market or other applicable settlement value as determined pursuant to the applicable exchange or ICE Clear Europe end-of-day settlement price process, and would be satisfied by application of mark-to-market margin posted, or that would have been posted but for reduced gains distribution, under Rule 915(e). Thus, ICE Clear Europe would owe no additional amount in connection with the tear-up.

vi. Reduced Gains Distributions

To provide an additional secondary default management action for the CDS Contract Category, the proposed rule change would modify ICE Clear Europe's existing variation margin haircutting rules for the F&O Contract Category, as set forth in existing Rule 914, and extend the proposed modified rules so that they apply to both the F&O Contract Category and the CDS Contract Category.[11] Currently, these provisions only apply to the F&O Contract Categories. The proposed rule change would rename these provisions as ''reduced gains distribution'' and make them applicable to all contract categories.

For CDS Contracts specifically, the proposed rule change would only allow ICE Clear Europe to use reduced gains distribution for CDS Contracts after (i) there has been an unsuccessful Initial CDS Auction, (ii) ICE Clear Europe has exhausted its remaining available default resources (including assessment contributions paid up to that point), and (iii) ICE Clear Europe has called for Assessment Contributions and such contributions have become due and payable. Moreover, proposed Rule 914(o) would only allow ICE Clear Europe to invoke reduced gains distribution for CDS Contracts for up to five consecutive business days. Under revised Rule 914(b), ICE Clear Europe would determine at the close of business on each business day in this five-day period whether the conditions for reduced gains distributions persist.

Reduced gains distribution would allow ICE Clear Europe to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to Clearing Members. While using reduced gains distribution, ICE Clear Europe would attempt a Secondary CDS Auction. If ICE Clear Europe were able to conduct a successful Secondary CDS Auction, the day of that successful auction or the preceding business day (if ICE Clear Europe so determines) would be the last day for reduced gains distribution. If ICE Clear Europe is unable to conduct a successful Secondary CDS Auction by the end of the five business day reduced gains distribution period, ICE Clear Europe would proceed to conduct a partial tear-up under Rule 915 as of the close of business on such fifth business day.

Pursuant to proposed Rule 914(p), if reduced gains distribution would apply to CDS Contracts on any day, the net amount owed on such day to each Margin Account of each Contributor (meaning a Clearing Member or Sponsored Principal that is not in default) that would otherwise be entitled to receive mark-to-market margin or other payments in respect of such account would be subject to a percentage haircut, based on the incoming mark-to-market margin from other Clearing Members. ICE Clear Europe would determine haircuts independently on each day of reduced gains distribution for CDS Contracts and would apply them separately for each margin account for each Contributor.

The proposed rule change would also make changes to Rule 914(i) to clarify the obligations of the Clearing House upon termination of reduced gains distribution, as well as certain clarifications to the provisions in Rule 914(i) as they apply to F&O Contracts. Moreover, a related proposed amendment to Rule 906(a) would clarify that the calculation of a net sum on default would treat the payment or return of variation margin or mark-to-market margin as having been successfully and fully made even if reduced gains distributions have been applied, and therefore the defaulter would not pay or receive such variation margin or mark-to-market margin in the net sum on default.

vii. Recoveries From Defaulting Clearing Members

The proposed rule change would add to Rule 907 a new subsection (c), which would address the Clearing House's authority to seek recoveries from a defaulting Clearing Member on its own behalf and on behalf of Clearing Members, including through setoff or legal process.[12] The proposed rule change would also revise Rule 907 to state ICE Clear Europe's obligations with respect to seeking recoveries from a defaulting Clearing Member where the Guaranty Fund Contributions of non-defaulting Clearing Member have been applied, and provide that in such case ICE Clear Europe will exercise the same degree of care in enforcement and collection of any claims against the defaulter as it exercises with respect to its own assets that are not subject to allocation to Clearing Members and others. The proposed rule change would also remove certain contrary provisions of the Rules to the effect that ICE Clear Europe has no obligation to pursue recoveries from defaulters, such as existing Rule 914(m).

viii. Delay of Outbound Variation Margin

The proposed rule change would extend the provisions of existing Rule 110(f) to the CDS Contract Category.[13] Rule 110(f) would permit ICE Clear Europe to delay making a variation margin or mark-to-market margin payment, solely on an intra-day basis, where a Clearing Member or Sponsored

[11] *See* Notice, 84 FR at 22532–33.

[12] *See* Notice, 84 FR at 22533.

[13] *See* Notice, 84 FR at 22533.

Principal has failed to make a corresponding payment to ICE Clear Europe, and the amount of the failure exceeds the initial or original margin posted by that Clearing Member or Sponsored Principal.

ix. Governance

The proposed rule change includes a number of revisions that would specify the required governance provisions that would apply to these new default management tools.[14]

Under the CDS Default Auction Procedures, ICE Clear Europe would be required to consult with its CDS Default Committee as to certain matters of auction design, including the division of the relevant portfolio into lots, whether to hold additional auctions, and whether to accept a partial fill of any lot in any such auction. The CDS Default Committee would be made up of personnel seconded from Clearing Members, who would be required to act in the best interests of ICE Clear Europe when acting in their capacity as members of the CDS Default Committee. The CDS Default Committee would be expected to work together with, and under the supervision of, the ICE Clear Europe risk department, and would be supported by ICE Clear Europe legal, compliance, and other personnel.

Moreover, based on its existing Board charter and practice, ICE Clear Europe would expect that key decisions regarding use of the recovery tools would be made in consultation with the ICE Clear Europe Board of Directors, which is independent of ICE Clear Europe management. Specifically, the Board has delegated to the President of ICE Clear Europe authority to take the relevant steps set out under the Rules, or to ensure that such steps are taken, upon an Event of Default with respect to a Clearing Member. Under the terms of delegation, the President would be required to ensure that the Board is informed of the relevant circumstances, steps or actions taken, and determinations made or approvals given, as soon as practicable subsequent to such Event of Default. The Board would be able to, in its discretion and where possible and practical, rescind any steps or actions taken or determinations made or approvals given by the President, or amend such actions, steps, determinations, or approvals, as the Board determined appropriate.

B. Clarifications of Guaranty Fund Requirements and Uses

The proposed rule change would make various clarifications and conforming changes to the provisions of Rule 908 to address contributions to and uses of the Guaranty Fund.[15] The proposed rule change would also move and reorganize provisions in Rules 909, 910, and 911 as described below.

- The proposed rule change would update ICE Clear Europe's ability to modify the order of application of Guaranty Fund Contributions under the Auction Procedures to provide for juniorization based on bidding (Rule 908(i), and conforming cross-references throughout).
- Proposed revisions to Rule 909 would specify a single Powers of Assessment for all Contract Categories, eliminating inconsistencies across the default rules for different products. The proposed rule change would make various deletions and insertions to remove duplication among the three Contract Categories. In addition, the proposed rule change would remove as unnecessary a certification requirement in connection with the application of claims under any default insurance policies for F&O Contracts (Rules 909–911).
- Proposed Rule 909(a) would permit assessments for CDS Contracts to be called in anticipation of any charge against the CDS Guaranty Fund following a default, rather than only after such a charge. This proposed change would be consistent with the current treatment of assessments for F&O Contracts.
- The proposed rule change would make certain changes throughout Part 11 of the Rules to align the process for return of Guaranty Fund Contributions following termination of Clearing Membership across all Contract Categories, align the Guaranty Fund Contribution calculation methodology across all Contract Categories, and to clarify that separate Guaranty Fund Contribution amounts calculated in respect of Proprietary and Customer positions could be applied across any type of account. The proposed rule change would modify Rule 1101(e) to better reflect current practice for the calculation of Guaranty Fund Contributions. Finally, the proposed rule change would delete Rule 1102(n) and merge its content into Rule 1102(m).

C. Cooling-Off Period, Withdrawal, and Termination for CDS Contracts

i. Cooling-Off Period

The proposed rule change would modify the Cooling-off Period concept in Rule 917 to apply it to CDS Contracts, adjust the calculation of the relevant cap on contributions for all Contract Categories, and reduce the length of the Cooling-off Period.[16] Under the proposed rule change, certain calls for assessments for the relevant Contract Category, or a sequential Guaranty Fund depletion in the relevant Contract Category within a specified period, would trigger a Cooling-off Period. The proposed rule change would reduce the base length of the Cooling-off Period from 30 Business Days to 30 calendar days in order to balance the goals of limited liability and certainty for Clearing Members with the need for the Clearing House to restore normal operations following recovery as quickly as possible. As under the current Rules, a Cooling-off Period could be extended as a result of subsequent defaults during the period.

Rule 917(b) would also be revised to provide that the ''3x'' cap on relevant contributions during a Cooling-off Period would apply to both Assessment Contribution and replenishments of the Relevant Guaranty Fund, in the aggregate, regardless of the number of defaults during the period. The cap would be based on a Clearing Member's individual Guaranty Fund Contribution immediately prior to the default that triggered the Cooling-off Period. Moreover, under the proposed rule change, the existing single-default cap on Assessment Contributions under Rule 909 would continue to apply in a Cooling-off Period, as set out in Rule 917(b)(iii). The proposed rule change would also allow ICE Clear Europe to rebalance, reset, and recalculate the Relevant Guaranty Fund during the Cooling-off Period, but such changes would not affect the aggregate 3x contribution limit. Finally, under proposed Rule 917(e), the proposed cap would not affect ICE Clear Europe's right to call for margin from a Clearing Member.

ii. Clearing Member Withdrawal

The proposed rule change would make certain changes to existing Rules 209, 917, and 918, which currently apply only to F&O and FX Clearing Members, and apply them to the CDS Contract Category as well, such that these rules would apply to all ICE Clear Europe Clearing Members and Sponsored Principals.[17]

Specifically, under revised Rule 917(c), CDS Clearing Members (like other Clearing Members) and Sponsored Principals would be able to withdraw from ICE Clear Europe during a Cooling-

[14] *See* Notice, 84 FR at 22535.

[15] *See* Notice, 84 FR at 22533–22534.

[16] *See* Notice, 84 FR at 22534.

[17] *See* Notice, 84 FR at 22534.

off Period by providing an irrevocable notice of withdrawal [18] in the first 10 business days of the period (subject to extension in certain cases if the Cooling-off Period is extended). CDS Clearing Members could withdraw from ICE Clear Europe at other times by notice to ICE Clear Europe under Rule 209(c). Under Rule 209(d), however, a CDS Clearing Member that seeks to withdraw other than during the first 10 business days of a Cooling-off Period could, at the direction of ICE Clear Europe, be required to make a deposit of up to three times the CDS Clearing Member's required Guaranty Fund Contribution (this provision already applies to F&O Clearing Members). This increased deposit requirement is intended to provide assurance that the withdrawing Clearing Member would continue to meet its obligations in respect of defaults and potential defaults before its withdrawal would be effective, and thus reduce the potentially destabilizing effect that a Clearing Member withdrawal (or a series of withdrawals) could have on the Clearing House during a stressed situation.

Consistent with existing Rule 918's application to F&O and FX Clearing Members, a CDS Clearing Member's withdrawal under proposed revised Rule 918 would not be effective until the CDS Clearing Member closed out all outstanding positions and satisfied any related obligations. Further, a withdrawing CDS Clearing Member would remain liable under Rule 918 with respect to charges and assessments resulting from defaults that occurred before such time.

iii. Clearing Service Termination

The proposed rule change would extend the existing provisions of Rules 105(c), 912, and 916, which currently apply only to the F&O and FX Contract Categories and provide for full clearing service termination for one or more of those specific Contract Categories, such that they would apply to the CDS Contract Category as well.[19]

Specifically, Rule 105(c) would apply where ICE Clear Europe determines to cease acting as a Clearing House, whether generally or in relation to a particular class of Contracts. It would provide for the application of the procedures and terms in specified sections of Rule 918 to effect termination of the relevant contracts, including the timing of termination and the determination of the termination price.

Rule 912 would permit ICE Clear Europe to terminate upon events such as a clearing house insolvency and failure to pay.

Rule 916 would apply where ICE Clear Europe determines to terminate an entire Contract Category in certain circumstances following an Event of Default, including where there has been an Under-priced Auction or the Clearing House otherwise does not believe it will have sufficient assets to perform its obligations in respect of that Contract Category.

D. Additional Changes

The proposed rule change would also make certain drafting improvements and updates, clarifications, and conforming changes to the Rules.[20] In particular, the proposed rule change would revise Rule 101 to add new defined terms that are used in the changes and amendments discussed above. The proposed rule change would also revise Rule 101 to include, for clarity, additional cross-references to various terms that are defined in other parts of the Rules. The proposed rule change would also make other updates to definitions and cross-references throughout the Rules, including in Parts 4 and 11.

The proposed rule change would make certain other conforming changes throughout the Rules to reflect the new default management tools and provisions discussed above, as well as related defined terms. Specifically, the proposed rule change would amend Rule 903(d) to align treatment of automatic default termination provisions for all Contract Categories; revise Rule 906 to clarify that certain amounts payable to Clearing Members in respect of Guaranty Fund Contributions, assessments, reduced gains distribution, partial tear-up, and collateral offset obligations would be taken into account in that component of the net sum calculation; and add to Rule 918(a)(viii) a cross-reference to the relevant Settlement Finality Regulations. The proposed rule change also would make certain minor clarifications and conforming updates in Part 12, designed to ensure consistency with the changes described above. The proposed rule change would also amend Rule 1901(k) to provide that Sponsored Principals could be required to participate in Default Auctions. Finally, the proposed rule change would make certain other typographical and cross-reference corrections throughout the Rules, and would amend ICE Clear Europe's Clearing Procedures to reflect the renaming of ICE Clear Europe's risk model.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[21] After carefully considering the proposed rule change, the Commission believes the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to ICE Clear Europe. More specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act [22] and Rules 17Ad–22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii) thereunder.[23]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest.[24]

In general, ICE Clear Europe maintains equal and opposite obligations on cleared positions (commonly referred to as a matched book). In an extreme loss event caused by a Clearing Member default, re-establishing a matched book as quickly as possible is essential because it would allow ICE Clear Europe to continue clearing and settling securities transactions as a central counterparty. In addition, allocating uncovered losses is important in such an event because it would allow ICE Clear Europe to provide further certainty to Clearing Members, their customers, and other stakeholders about how it addresses such losses and how it avoids a disorderly resolution to such an event. Thus, taken together, the Commission believes that the new and amended

[18] Pursuant to Rule 918(c), membership could only be reinstated pursuant to a new application for membership following the close-out of all of the relevant Clearing Member's open Contracts of the Relevant Contract Category.

[19] *See* Notice, 84 FR at 22534–22535.

[20] *See* Notice, 84 FR at 22535.

[21] 15 U.S.C. 78s(b)(2)(C).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii).

[24] 15 U.S.C. 78q–1(b)(3)(F).

authority granted to ICE Clear Europe specific to the context of extreme loss events described above, such as the conduct of default auctions and the use of partial tear-up, should enhance ICE Clear Europe's ability to re-establish a matched book, allocate uncovered losses if necessary, and limit ICE Clear Europe's potential exposure to losses from such an event, all of which would be essential to ICE Clear Europe's ability to continue to promptly and accurately clear and settle securities transactions in the event that an extreme market event places ICE Clear Europe in a recovery scenario.

Further, the Commission believes that the proposed changes would provide a reasonable amount of clarity and specificity to Clearing Members, their customers, and other stakeholders about the potential tools that would be expected to be available to ICE Clear Europe if such an event occurred, and the consequences that might arise from ICE Clear Europe's application of such tools. Specifically, the Commission believes the removal of forced allocation as a default management tool would provide certainty that non-defaulting Clearing Members would not be required to take on positions in a defaulting Clearing Member's portfolio that could result in unpredictable and unquantifiable liability. Similarly, the Commission believes the CDS Default Auction Procedures would provide certainty regarding the conduct of initial and secondary auctions and the use, and possible juniorization, of Guaranty Fund and Assessment Contributions based on participation in such auctions. Moreover, the Commission believes the proposed clarification of ICE Clear Europe's obligations with respect to seeking recoveries from a defaulting Clearing Member where the Guaranty Fund Contributions of non-defaulting Clearing Member have been applied would provide Clearing Members with certainty that ICE Clear Europe would exercise the same degree of care in enforcement and collection of any claims against the defaulter as it would exercise with respect to its own assets. The Commission also believes the proposed clarification regarding the return of Guaranty Fund Contributions following termination of Clearing Membership and the calculation of Guaranty Fund Contributions across all contract categories would provide Clearing Members with important information about the use and calculation of the Guaranty Fund. In addition, the Commission believes the proposed application of existing ICE Clear Europe Rules regarding withdrawal by Clearing Members and termination of clearing services to CDS Contracts would provide CDS Clearing Members with clarity regarding the process and requirements for withdrawal from ICE Clear Europe and ICE Clear Europe's ability to terminate the CDS clearing service in certain circumstances. Finally, the Commission believes that the proposed rule change's clarification that certain amounts payable to a defaulting Clearing Member in respect of that Clearing Member's Guaranty Fund Contributions, assessments, reduced gains distribution, partial tear-up, and collateral offset obligations would offset the amount owed by that Clearing Member upon default would provide greater certainty regarding amounts owed upon default.

Because of this increased clarity and specificity, ICE Clear Europe's Clearing Members, their customers, and other stakeholders should have more information regarding their potential exposure and liability to ICE Clear Europe in an extreme loss event. Accordingly, the Commission believes that the proposed changes should allow Clearing Members, their customers, and other stakeholders to better evaluate the risks and benefits of clearing transactions at ICE Clear Europe, because the proposed changes result in those parties having more information and specificity regarding the actions that ICE Clear Europe could take in response to an extreme loss event. To the extent that Clearing Members, their customers, and other stakeholders are able to use this increased clarity and specificity to better manage their potential exposure and liability in clearing transactions at ICE Clear Europe, such parties should be able to mitigate the likelihood that such tools could surprise or otherwise destabilize them. For these reasons, the Commission believes that the proposed rules providing for such clarity and specificity are designed, in general, to protect investors and the public interest.

It is important for ICE Clear Europe to implement measures that enhance ICE Clear Europe's ability to address losses and to avoid threatening its ability to safeguard securities and funds within ICE Clear Europe's custody or control, including measures designed to facilitate ICE Clear Europe's ability to address risks and obligations arising in the specific context of extreme loss events. ICE Clear Europe's proposed modified assessment powers would impose a cap on a Clearing Member's potential liability to replenish the Clearing Fund following a particular default event and extend the timeframe during which a Clearing Member must determine whether to terminate its membership and avoid further losses. Similarly, the proposed rule change would establish a Cooling-off Period, which would cap Clearing Members' obligations to make Assessment Contributions and replenish the Relevant Guaranty Fund and would provide Clearing Members the opportunity to withdraw from the Clearing House. Moreover, ICE Clear Europe's proposed reduced gains distributions would allow ICE Clear Europe, in certain circumstances, to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to Clearing Members. Similarly, the proposed rule change would, in certain circumstances, permit ICE Clear Europe to delay payment of variation margin or mark-to-market margin with respect to CDS Contracts. Taken together, the Commission believes that these tools are reasonably designed to provide ICE Clear Europe with sufficient financial resources to cover default losses and help ensure that ICE Clear Europe can take timely actions to contain losses in the event of a Clearing Member default. Similarly, the Commission believes that these changes would provide Clearing Members and their customers with greater certainty and predictability regarding the amount of losses they could be required to bear as a result of a Clearing Member default, which in turn should allow them to better manage and potentially mitigate or otherwise limit their potential exposure to such losses. For these reasons, the Commission believes that the proposed rule change is designed to assure the safeguarding of securities and funds in ICE Clear Europe's custody or control.

Additionally, ICE Clear Europe's proposed authority to conduct partial tear-ups would provide ICE Clear Europe with a mechanism for restoring a matched book. The Commission recognizes that a tear-up would result in termination of positions of non-defaulting Clearing Members. However, because under the proposed rules ICE Clear Europe would only be able to use its tear-up authority for CDS Contracts after it has conducted an Initial Auction and Secondary Auction, both of which must have failed to eliminate or replace the risk of a defaulter's open positions before tear-up could be used, the Commission believes that a partial tear-up would only arise in an extreme stress scenario. The Commission further believes that that use of tear-up in such circumstances could potentially return ICE Clear Europe to a matched book quickly, thereby containing its losses

and avoiding exposing ICE Clear Europe and its Clearing Members to additional losses. ICE Clear Europe's proposal would also address the determination of the Partial Tear-Up Price. Specifically, for CDS Contracts, the Partial Tear-Up Price would equal the market price, as determined by ICE Clear Europe in accordance with its procedures. The Commission believes that ICE Clear Europe's proposed authority to conduct tear-ups could facilitate its ability to return to a matched book quickly and, in an extreme event, allocate losses. This, in turn, could help ensure that ICE Clear Europe is able to continue providing its critical clearing functions by facilitating the timely containment of default losses and liquidity pressures, thereby helping to prevent ICE Clear Europe from failing in such an event, and is therefore consistent with promoting the prompt and accurate clearance and settlement of securities transactions.

Therefore, the Commission believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, and, in general, protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Exchange Act.[25]

B. Well-Founded Legal Basis

Rule 17Ad–22(e)(1) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[26] The Commission believes that the proposed changes discussed above to: Revise Rule 101 to add new defined terms, update existing defined terms, and revise cross-references; revise Rules 903 and 906; update definitions and cross-references and make other conforming changes throughout the Rules; and correct typographical errors, are necessary to ensure that the proposed recovery rules are clear and transparent and operate as intended. The Commission therefore believes that this aspect of the proposed rule change would help to ensure that ICE Clear Europe's Rules are well-founded, clear, and enforceable.

Similarly, the Commission believes that the renaming of ICE Clear Europe's risk model in the Clearing Procedures would help to ensure that ICE Clear Europe's procedures are clear and transparent in referring to the current version of the risk model.

Accordingly, the Commission believes that the proposed rule change is consistent with Rule 17Ad–22(e)(1).[27]

C. Governance

Rules 17Ad–22(e)(2)(i), (iii), and (v) require, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent; support the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants; and specify clear and direct lines of responsibility.[28]

The proposal, taken together with existing ICE Clear Europe policies, procedures, and practices, specifies the governance provisions that would apply to ICE Clear Europe's use of each of the recovery tools set forth in the proposed rule change. Specifically, as discussed above, ICE Clear Europe's Board has delegated to the President of ICE Clear Europe authority to take the relevant steps set out under the Rules, or to ensure that such steps are taken, upon an Event of Default with respect to a Clearing Member. Under the terms of delegation, the President would be required to ensure that the Board is informed of the relevant circumstances, steps, or actions taken and determinations made or approvals given, as soon as practicable subsequent to such Event of Default. The Board would be able to, in its discretion, where possible and practical, rescind any steps or actions taken or determinations made or approvals given, or amend such actions, steps, determinations or approvals, as it determined appropriate.

Because key decisions by ICE Clear Europe in connection with the use of its proposed recovery tools upon an Event of Default are subject to specific governance processes, the Commission believes that the governance process for using the recovery tools is clear and transparent and provides clear and direct lines of responsibility by addressing decision making in the use of recovery tools, thereby supporting the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and therefore the Commission believes that the proposed rule change is consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v).[29]

D. Allocation of Credit Losses Exceeding Available Resources and Replenishment of Financial Resources Following a Default

i. Consistency With Rule 17Ad–22(e)(4)(viii)

Rule 17Ad–22(e)(4)(viii) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to address allocation of credit losses ICE Clear Europe may face if its collateral and other resources are insufficient to fully cover its credit exposures.[30] The proposed rule change includes two new recovery tools that would address the allocation of credit losses in the event that ICE Clear Europe determined that, notwithstanding the availability of any remaining resources under ICE Clear Europe's other resource rules, ICE Clear Europe may not have sufficient resources to satisfy its obligations and liabilities following a default. First, proposed revised Rule 909 would provide a framework for ICE Clear Europe to assess Clearing Members for additional contributions to the Clearing Fund. Second, proposed new Rule 915 would provide ICE Clear Europe the ability to conduct a mandatory partial tear-up of CDS Contracts. This tool could be used if necessary in the event that one or more Secondary CDS Auctions has failed to eliminate or replace all remaining risk of the open positions of a defaulting Clearing Member and any positions ICE Clear Europe entered into to hedge the risks of the open positions of a defaulting Clearing Member.

After due consideration of the record before it, the Commission believes that these additional recovery tools are reasonably designed to provide ICE Clear Europe with means to address allocation of credit losses that it may face if its collateral and other resources are insufficient to fully cover its credit exposures. Further, the Commission believes that these tools should enhance ICE Clear Europe's ability to address fully any credit losses that ICE Clear Europe may face as a result of any individual or combined default among its Clearing Members. Therefore, the Commission believes that these aspects of the proposed changes are consistent with Rule 17Ad–22(e)(4)(viii).[31]

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR 240.17Ad–22(e)(1).

[27] 17 CFR 240.17Ad–22(e)(1).

[28] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[29] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[30] 17 CFR 240.17Ad–22(e)(4)(viii).

[31] 17 CFR 240.17Ad–22(e)(4)(viii).

ii. Consistency With Rule 17Ad–22(e)(4)(ix)

Rule 17Ad–22(e)(4)(ix) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to describe ICE Clear Europe's process to replenish any financial resources it may use following a default or other event in which use of resources is contemplated.[32]

The proposed changes to ICE Clear Europe's assessment powers would produce in Rule 909 a single assessment rule for all categories of contracts cleared by ICE Clear Europe, thus eliminating inconsistencies across the default rules for different products. The proposed rule change would also permit assessments for CDS Contracts to be called in anticipation of any charge against the CDS Guaranty Fund following a default, rather than only after such a charge, consistent with the current treatment of assessments for F&O Contracts.

The proposed rule change would also include a Cooling-off Period for all categories of contracts cleared by ICE Clear Europe. Specifically, the proposed rule change would modify the Cooling-off Period concept in Rule 917 and apply it to CDS Contracts, reduce the base length of the Cooling-off Period from 30 Business Days to 30 calendar days, and provide that the 3x cap on contributions during a Cooling-off Period would apply to both Assessment Contributions and replenishments of the Relevant Guaranty Fund, in the aggregate, regardless of the number of defaults during the period. Moreover, under the proposed rule change, the existing single-default cap on Assessment Contributions under Rule 909 would continue to apply in a Cooling-off Period, as set out in Rule 917(b)(iii). Finally, under the proposed rule change, a Cooling-off Period would be triggered by certain calls for assessments for the relevant Contract Category or by sequential Guaranty Fund depletion in the relevant Contract Category within a specified period.

The Commission recognizes that by placing a cap on its assessment power during the Cooling-off Period, these revisions would effectively limit the amount of financial resources available to ICE Clear Europe from its Clearing Fund during that period. However, the Commission believes that it is appropriate for ICE Clear Europe to attempt to balance its need to maximize available financial resources with Clearing Members' need for certainty and predictability regarding their potential liability to the Guaranty Fund. Based on the record before it, the Commission believes that the proposals described above strike an appropriate balance and would provide greater certainty and predictability regarding Clearing Members' maximum liability to the Guaranty Fund. Moreover, Clearing Members that have made the maximum contribution during a Cooling-off Period would still be required, under proposed Rule 917(e), to provide additional proprietary initial margin during the period, which would facilitate ICE Clear Europe's ability to continue to satisfy its regulatory minimum financial resources requirements.

In light of the foregoing discussion, the Commission believes that the provisions related to ICE Clear Europe's assessment powers, taken together with the other components of ICE Clear Europe's default management procedures and recovery rules, are reasonably designed to allow ICE Clear Europe to replenish its financial resources following a default or other event in which use of such resources is contemplated, and therefore are consistent with Rule 17Ad–22(e)(4)(ix).[33]

E. Authority To Take Timely Action To Contain Losses and Liquidity Demands and Continue To Meet Obligations

Rule 17Ad–22(e)(13) requires, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[34] As described above, the proposed rule change would provide ICE Clear Europe with a variety of tools designed to help ensure that ICE Clear Europe is able to meet this requirement, including new CDS Default Auction Procedures, modified assessment powers, partial tear-ups, reduced gains distributions, and delay of outbound margin. The Commission believes that the new CDS Default Auction Procedures would provide ICE Clear Europe a means of containing the potential losses associated with a defaulting Clearing Member's open positions by providing ICE Clear Europe the ability to auction off a defaulting Clearing Member's portfolio. Similarly, the Commission believes that the modified assessment powers and partial tear-ups would provide ICE Clear Europe a mechanism for eliminating potential losses by allowing ICE Clear Europe to seek additional resources to cover losses and eliminate any positions of a defaulter remaining after an auction. Finally, the Commission believes that reduced gains distributions and delay of outbound margin would allow ICE Clear Europe to eliminate losses and respond to liquidity demands arising from a Clearing Member's default by eliminating or delaying payment of variation or mark-to-market margin. Thus, the Commission believes that these tools, taken together, would provide ICE Clear Europe the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations, consistent with Rule 17Ad–22(e)(13).

The Commission recognizes that a partial tear-up would result in termination of positions of non-defaulting Clearing Members. However, because ICE Clear Europe would only be able to use its partial tear-up authority after one or more unsuccessful Initial and Secondary CDS Auctions have failed to eliminate or replace all remaining risk of the open positions of a defaulting Clearing Member and any positions ICE Clear Europe entered into to hedge the risks of the open positions of a defaulting Clearing Member, the Commission believes that a tear-up would only arise in an extreme stress scenario. Further, use of tear-up in such circumstances could potentially return ICE Clear Europe to a matched book quickly, thereby containing its losses.

Similarly, the Commission recognizes that reduced gains distributions would result in some Clearing Members not receiving market gains on their positions. However, ICE Clear Europe could only invoke reduced gains distributions in certain limited circumstances that the Commission believes would most likely only occur in an extreme stress scenario. For example, for CDS Contracts, the proposed rule change would only allow ICE Clear Europe to use reduced gains distribution for CDS Contracts after (i) there has been an unsuccessful Initial CDS Auction, (ii) ICE Clear Europe has exhausted its remaining available default resources (including assessment contributions paid so far), and (iii) ICE Clear Europe has called for assessment contributions and such contributions have become due and payable. Similarly, although the proposed rule change would allow ICE Clear Europe to delay paying variation margin or mark-to-market margin with respect to CDS Contracts, the Commission believes this tool as well would only be invoked in an extreme stress scenario because ICE

[32] 17 CFR 240.17Ad–22(e)(4)(ix).

[33] 17 CFR 240.17Ad–22(e)(4)(ix).

[34] 17 CFR 240.17Ad–22(e)(13).

Clear Europe would only be permitted to delay paying variation margin or mark-to-market margin on an intra-day basis and only where (i) a Clearing Member has failed to make a corresponding payment to ICE Clear Europe and (ii) the amount of the failure exceeds the initial or original margin posted by that Clearing Member.

Taken together, the Commission believes that these tools are designed to provide greater certainty to Clearing Members seeking to estimate the potential risks and losses arising from their use of ICE Clear Europe, while enabling ICE Clear Europe to promptly return to a matched book in an extreme loss event caused by a Clearing Member default. The Commission believes that returning to a matched book pursuant to these provisions in the context of ICE Clear Europe's default management and recovery facilitates ICE Clear Europe's operational capacity to timely contain losses and liquidity demands while continuing to meet its obligations. Thus, the Commission believes that the proposed changes are consistent with Rule 17Ad–22(e)(13).[35]

F. Public Disclosure of Key Aspects of Default Rules

Rules 17Ad–22(e)(23)(i) and (ii) require, in relevant part, that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for the public disclosure of all relevant rules and material procedures, including key aspects of default rules and procedures, as well as sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in ICE Clear Europe.[36] The Commission believes that the proposed changes enhance key aspects of ICE Clear Europe's default rules and procedures, thereby providing Clearing Members with a better understanding of the potential risks and costs they might face in an extreme event where ICE Clear Europe may use its proposed recovery tools, including the potential use of partial tear-up and reduced gains distributions, and the circumstances in which Clearing Members may withdraw from ICE Clear Europe or ICE Clear Europe may terminate a clearing service. Accordingly, the Commission believes that ICE Clear Europe has disclosed these key aspects of its default rules and procedures, consistent with Rule 17Ad–22(e)(23)(i) and (ii).[37]

[35] 17 CFR 240.17Ad–22(e)(13).

[36] 17 CFR 240.17Ad–22(e)(23)(i) and (ii).

[37] *Id.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2019–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2019–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2019–003 and should be submitted on or before July 29, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[38] to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the publication of notice of Amendment No. 1 in the **Federal Register**. As discussed above, ICE Clear Europe filed Amendment No. 1 to add a confidential Exhibit 3 to the filing associated with the proposed rule change. Amendment No. 1 did not make any changes to the substance of the filing or the text of the proposed rule change, nor did it raise any novel regulatory issues.

Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[39]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[40] and Rules 17Ad–22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii) thereunder.[41]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[42] that the proposed rule change, as modified by Amendment No. 1 (SR–ICEEU–2019–003), be, and hereby is, approved on an accelerated basis.[43]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–14403 Filed 7–5–19; 8:45 am]

BILLING CODE 8011–01–P

[38] 15 U.S.C. 78s(b)(2).

[39] 15 U.S.C. 78s(b)(2).

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] 17 CFR 240.17Ad–22(e)(1), (e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii).

[42] 15 U.S.C. 78s(b)(2).

[43] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86257; File No. SR–FINRA–2019–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rules 2210 (Communications With the Public) and 2241 (Research Analysts and Research Reports)

July 1, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 2210 (Communications with the Public) and 2241 (Research Analysts and Research Reports) to conform to the requirements of the Fair Access to Investment Research Act of 2017 (''FAIR Act'').[3] The proposed rule change would eliminate the ''quiet period'' restrictions in Rule 2241 on publishing a research report or making a public appearance concerning a covered investment fund and would create a filing exclusion under FINRA Rule 2210 for covered investment fund research reports.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FAIR Act

The FAIR Act requires the SEC to propose and adopt rule amendments that would extend the current safe harbor under Securities Act of 1933 (''Securities Act'') Rule 139[4] to a ''covered investment fund research report'' upon terms and conditions that the SEC determines are necessary or appropriate in the public interest, for the protection of investors, and for the promotion of capital formation.[5] In implementing the safe harbor for covered investment fund research reports, the SEC is required to: (1) Meet specified requirements concerning the safe harbor's conditions, (2) prohibit any self-regulatory organization (''SRO'') from maintaining or enforcing specified rules regarding such reports, and (3) provide that a covered investment fund research report is not subject to the sales material filing requirements in section 24(b) of the Investment Company Act of 1940 (''Investment Company Act'').[6] On November 30, 2018, the SEC adopted its final rules and rule amendments to implement the mandates of the FAIR Act.[7] These requirements are discussed in more detail below.

Definition of ''Covered Investment Fund Research Report''

Under the FAIR Act, a ''research report'' generally has the meaning given that term under section 2(a)(3) of the Securities Act.[8] Under section 2(a)(3), ''research report'' means ''a written, electronic or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.''[9] In contrast, under FINRA Rule 2241 (Research Analysts and Research Reports), the term ''research report'' is defined as ''any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries (other than an open-end investment registered investment company that is not listed or traded on an exchange) and that provides information reasonably sufficient upon which to base an investment decision.''[10]

Under the FAIR Act, the term ''covered investment fund research report'' includes a research report published or distributed by a broker-dealer about a ''covered investment fund,''[11] or any of the covered investment fund's securities. However, a covered investment fund research report excludes research published or distributed by the covered investment fund itself, any affiliate of a covered investment fund, or any broker-dealer that is an investment adviser (or an affiliated person of an investment adviser) to the covered investment fund.[12]

Rule 139

Securities Act Rule 139 provides that a broker's or dealer's publication or distribution of a research report about an issuer or any of its securities shall be deemed for purposes of sections 2(a)(10) and 5(c) of the Securities Act not to constitute an offer for sale or offer to sell a security that is the subject of a registered offering, provided that the issuer and its securities meet specified conditions in the Rule. Rule 139 is sometimes described as a ''safe harbor'' for such research reports, since they are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Fair Access to Investment Research Act of 2017, Public Law 115–66, 131 Stat. 1196 (2017).

[4] 17 CFR 230.139.

[5] *See* section 2(a) of the FAIR Act.

[6] *See* section 2(b) of the FAIR Act.

[7] *See* Securities Act Release No. 10580 (November 30, 2018), 83 FR 64180 (December 13, 2018) (the ''Release'').

[8] However, the term does not include an oral communication. *See* section 2(f)(6) of the FAIR Act.

[9] *See* section 2(a)(3) of the Securities Act, 15 U.S.C. 77b(a)(3).

[10] The definition includes a number of exclusions, such as for communications that are limited to discussions of broad-based indices, communications that are distributed to fewer than 15 persons, and statutory prospectuses that are filed as part of an issuer's registration statement. *See* FINRA Rule 2241(a)(11).

[11] Section 2(f)(2) of the FAIR Act defines ''covered investment fund'' as:

(A) An investment company registered under, or that has filed an election to be treated as a business development company under, the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and that has filed a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; and

(B) a trust or other person—

(i) issuing securities in an offering registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and which class of securities is listed for trading on a national securities exchange;

(ii) the assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

(iii) that provides in its registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that a class of its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

[12] *See* section 2(f)(3) of the FAIR Act.

not subject to many of the Securities Act's requirements for written offers of securities. Prior to the SEC's adoption of rules required by the FAIR Act, Rule 139's safe harbor was not available for a broker-dealer's publication or distribution of research reports pertaining to specific registered investment companies or business development companies (''BDCs'').

In implementing the safe harbor, the FAIR Act directs the SEC to meet certain requirements concerning covered investment fund research reports. For example, the SEC is limited in terms of imposing conditions to the safe harbor related to a broker-dealer's initiation of research, or related to a covered investment fund's registration history or minimum net assets.

In addition, the SEC must provide that covered investment fund research reports will not be subject to the filing requirements of section 24(b) of the Investment Company Act, or rules or regulations thereunder, except to the extent that such reports are not subject to content standards of any SRO rules related to research reports, including those governing communications with the public.[13] However, the FAIR Act also specifies that nothing in the Act shall be construed as in any way limiting the authority of any SRO to examine or supervise a member's practices in connection with covered investment fund research reports for compliance with federal law and SRO rules, or to require the filing of communications the purpose of which is not to provide research and analysis of covered investment funds.[14]

The FAIR Act also requires the SEC to provide that SROs may not prohibit the ability of a broker-dealer to publish or distribute a covered investment fund research report solely because the broker-dealer is participating in a registered offering or other distribution of the fund, and that an SRO may not prohibit the ability of a broker-dealer to participate in the registered offering or distribution of a covered investment fund solely because the broker-dealer has published or distributed research about the fund.[15]

SEC Final Rules Under the FAIR Act

On November 30, 2018, the SEC adopted its final rules and rule amendments to implement the mandates of the FAIR Act.[16] First, the SEC adopted new Rule 139b under the Securities Act, which expanded the Rule 139 safe harbor to include covered investment fund research reports, subject to specified conditions. Rule 139b adopts the FAIR Act's definitions of ''covered investment fund,'' ''covered investment fund research report,'' and ''research report,'' subject to minor non-substantive revisions.[17]

Among other things, in order to qualify for the Rule 139b safe harbor with respect to an issuer-specific research report, the covered investment fund that is the subject of the report must have been subject to relevant reporting requirements under the Investment Company Act and the Exchange Act for at least 12 calendar months prior to the reliance on the safe harbor, and these reports must have been filed in a timely manner.[18] In addition, the covered investment fund must satisfy a minimum public market threshold at the date of reliance on Rule 139b (the ''float'' requirement), which is currently $75 million.[19] In addition, the safe harbor requires that a broker-dealer's publication or distribution of research reports be ''in the regular course of its business.'' [20] Rule 139b also contains other conditions for industry reports, and with regard to the presentation of performance information of a registered open-end management investment company or a trust account.[21]

In addition, Rule 139b provides that an SRO may not maintain or enforce any rule that would prohibit the ability of a member to publish or distribute a covered investment fund research report solely because the member is participating in a registered offering or distribution of securities of a covered investment fund, or to participate in a registered offering or other distribution of such securities solely because the member has published or distributed a covered investment fund research report about the fund or its securities.[22]

The SEC also adopted new Rule 24b–4 under the Investment Company Act, which specifies that a covered investment fund research report as defined in Rule 139b that concerns a fund registered under the Investment Company Act shall not be subject to section 24(b) of the Act or any rules or regulations thereunder, unless the report is not subject to SRO rules relating to research reports, including rules governing communications with the public.[23] Section 24(b) of the Investment Company Act generally requires certain registered investment companies and their underwriters to file sales material concerning those funds with the SEC within 10 days of use.[24]

Changes to FINRA Rules Required by the FAIR Act

FINRA interprets the FAIR Act as requiring it to make two changes to FINRA Rules. First, FINRA is proposing to amend Rule 2241 to eliminate the quiet period restrictions on publishing a research report or making a public appearance concerning a covered investment fund that is the subject of such a report. Second, FINRA is proposing to amend Rule 2210 to create a filing exclusion for covered investment fund research reports that qualify for the Securities Act Rule 139b safe harbor.

FINRA Equity Research Rules

FINRA Rule 2241 governs the publication of research reports concerning equity securities and the analysts that produce such research. Under Rule 2241, members must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts.[25] Among other things, these policies and procedures must define periods during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, related to the issuer (''quiet periods'').

These quiet periods restrict a member that has participated as an underwriter or dealer in an initial public offering (''IPO'') from publishing research or having its research analysts make public appearances for a minimum of 10 days following the date of an IPO. They also restrict a member that has acted as a manager or co-manager of a secondary offering from publishing research or having its research analysts make personal appearances for a minimum of three days following the date of the offering.[26]

[13] *See* section 2(b)(4) of the FAIR Act.

[14] *See* section 2(c)(2) of the FAIR Act.

[15] *See* section 2(b)(3) of the FAIR Act.

[16] *See* Release, *supra* note 7.

[17] *See* 17 CFR 230.139b(c).

[18] *See* 17 CFR 230.139b(a)(1)(i)(A).

[19] *See* 17 CFR 230.139b(a)(1)(i)(B). The required float value does not include shares held by affiliates of the fund, and is based on General Instruction I.B.1 to Form S–3.

[20] *See* 17 CFR 230.139b(a)(1)(ii).

[21] *See* 17 CFR 230.139b(a)(2) and (a)(3).

[22] *See* 17 CFR 230.139b(b).

[23] *See* 17 CFR 270.24b–4.

[24] *See* 15 U.S.C. 80a–24(b). This filing requirement applies to sales material concerning any registered open-end management investment company, any registered unit investment trust (''UIT''), or any registered face-amount certificate company (''FACC'').

[25] *See* FINRA Rule 2241(b)(1).

[26] *See* FINRA Rule 2241(b)(2)(I). This provision contains specified exceptions to the quiet periods

Continued

While Rule 2241 excludes from its definition of ''research report'' communications related to mutual funds, the Rule applies to communications that meet the definition of ''research report'' under Rule 2241 concerning other covered investment funds, including closed-end funds (''CEFs''), exchange-traded funds (''ETFs''), BDCs, UITs, and commodity or currency funds, to the extent such research reports are published by an underwriter or dealer in the IPO or manager or co-manager of a secondary offering.[27] Accordingly, such research reports (as defined under Rule 2241) on covered investment funds (other than mutual funds) are subject to Rule 2241's quiet periods.

As discussed above, the FAIR Act requires the SEC to prohibit any SRO from maintaining or enforcing any rule that would prohibit the ability of a member to:

- Publish or distribute a covered investment fund research report solely because the member is also participating in a registered offering or other distribution of the fund; or
- Participate in a registered offering or other distribution of securities of a covered investment fund solely because the member has published or distributed a covered investment fund research report about the fund or its securities.[28]

Accordingly, FINRA is proposing to amend Rule 2241 to add a new exception from the Rule's quiet period requirements for the publication or distribution of research reports and research analysts' public appearances if the member has participated in the offering of the subject company's securities.[29] Under this new exception, the quiet period requirements shall not apply to a research report or a public appearance following any offering of the securities of a covered investment fund that is the subject of a covered investment fund research report.[30] Although the FAIR Act does not address quiet periods for public appearances by research analysts, FINRA also proposes to eliminate quiet periods for public appearances concerning a covered investment fund. Under Rule 2241, quiet periods for both research reports and public appearances are the same, and FINRA believes elimination of those quiet periods would advance the policy objectives of the FAIR Act.[31]

Elimination of Filing Requirement

As discussed above, section 24(b) of the Investment Company Act requires registered open-end management investment companies, registered UITs, registered FACCs, and their underwriters to file sales material for the funds with the SEC within 10 days of first use. Investment Company Act Rule 24b–3 provides that any sales material shall be deemed filed with the SEC for purposes of section 24(b) upon filing with a registered national securities association that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.[32]

Accordingly, virtually all principal underwriters of mutual funds, ETFs, UITs and FACCs satisfy the section 24(b) requirement by filing their sales material with FINRA. Rule 2210 requires members to file within 10 business days of first use or publication retail communications that promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, ETFs, variable insurance products, CEFs and UITs), as well as retail communications that concern any other registered security that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency.[33]

As discussed above, pursuant to section 2(b)(4) of the FAIR Act, the SEC has adopted Investment Company Act Rule 24b–4, which provides that a covered investment fund research report, as defined in Securities Act Rule 139b(c)(3), of a covered investment fund registered as an investment company under the Investment Company Act, shall not be subject to section 24(b) of the Act. However, a covered investment fund research report is still subject to the section 24(b) filing requirement if the report is not subject to the content standards of any SRO rules related to research reports, including those contained in the SRO's communications rules regarding investment companies or substantially similar standards.[34]

As discussed above, section 2(c)(2) of the FAIR Act provides that nothing in the Act shall be construed as in any way limiting the authority of any SRO to examine or supervise a member's practices in connection with the member's publication or distribution of a covered investment fund research report for compliance with applicable provisions of the Federal securities laws or SRO rules related to research reports, including those contained in rules governing communications with the public, or to ''require the filing of communications with the public the purpose of which is not to provide research and analysis of covered investment funds.'' [35] Accordingly, FINRA interprets the FAIR Act as requiring FINRA to create a filing exclusion in Rule 2210 for covered investment fund research reports, but permits FINRA to require the filing of a covered investment fund research report if the purpose of the report is not to provide research and analysis of covered investment funds.

In the Release, the SEC made clear that, even if the exclusion of covered investment fund research reports from the provisions of section 24(b) affects the applicability of FINRA Rule 2210's filing requirements or exclusions, ''it would not affect FINRA's authority to require the filing of a communication that is included in the FAIR Act

for research reports and public appearances following an offering of securities of an Emerging Growth Company, for reports or appearances that discuss significant news or events concerning a subject company, and for reports and appearances regarding subject companies with ''actively traded securities'' as defined in SEC Regulation M.

[27] *See* FINRA Rule 2241(a)(11).

[28] *See* section 2(b)(3) of the FAIR Act. The SEC implemented this requirement in Securities Act Rule 139b(b).

[29] As discussed above, because the definition of ''research report'' under Rule 2241 is narrower than the definition of ''research report'' under the FAIR Act, not all covered investment fund research reports are subject to Rule 2241. Nevertheless, to the extent that a covered investment fund research report is also a research report subject to Rule 2241, the publication and distribution of such reports will not be subject to the rule's quiet periods.

[30] FINRA also proposes to define the terms ''covered investment fund'' and ''covered investment fund research report'' as having the same meanings as in Securities Act Rule 139b. *See* proposed FINRA Rules 2241(a)(15) and (16) in Exhibit 5.

[31] FINRA rules do not prohibit a member from participating in a registered offering or other distribution of securities of a covered investment fund solely because the member has published research about the fund. Accordingly, there is no need to amend any FINRA rule to meet this requirement of section 2(b)(3) of the FAIR Act or Securities Act Rule 139b(b).

[32] FINRA is currently the only national securities association registered under the Exchange Act that has adopted such rules and procedures.

[33] *See* FINRA Rules 2210(c)(3)(A) and (D). For a one-year period beginning on the date reflected in FINRA's Central Registration Depository (CRD®) system as the date that FINRA membership became effective, a member also must file with FINRA at least 10 business days prior to first use any broadly disseminated retail communication, regardless of whether it concerns a registered investment company. *See* FINRA Rule 2210(c)(1)(A). In addition, a member must file at least 10 business days prior to first use any retail communication concerning registered investment companies that includes performance rankings or comparisons that are not generally published, or that were created by the investment company, its underwriter, or an affiliate. *See* FINRA Rule 2210(c)(2)(A).

[34] *See* 17 CFR 270.24b–4.

[35] *See* section 2(c)(2) of the FAIR Act.

definition of 'covered investment fund research report' but whose purpose is not to provide research and analysis.'' [36]

The SEC also discussed in the Release industry comments recommending that FINRA modify its rules in light of the FAIR Act. One commenter recommended that FINRA harmonize its research rules with SEC Rule 139b and that broker-dealers relying on Rule 139b be exempted from FINRA's filing requirements with respect to covered investment fund research reports. Another commenter suggested that the FAIR Act be interpreted as limiting FINRA's authority to require the filing of covered investment fund research reports only if a report provides ''information'' that a user would not be able to use for research and analysis, since such information would be for promotional rather than research purposes. In addition, one commenter argued that because the definition of ''research report'' under the FAIR Act is broader than FINRA's definition of ''research report'' in Rule 2241, this difference may cause confusion and conflicting interpretive views on what communications are deemed research for purposes of the safe harbor and filing exclusion.[37]

FINRA believes that it would be inconsistent with the requirements of Section 15D of the Exchange Act to modify the definition of ''research report'' under FINRA Rule 2241 to match the definition of ''research report'' under the FAIR Act and Rule 139b. Section 15D of the Exchange Act, which was enacted as part of the Sarbanes-Oxley Act, required FINRA to adopt rules reasonably designed to address research analyst conflict of interests, and specifically defined ''research report'' using language similar to that used in FINRA Rule 2241.[38] FINRA further notes that SEC Regulation Analyst Certification (''Reg AC'') also uses a substantially similar definition of ''research report.'' FINRA Rule 2241 and Reg AC have different regulatory objectives than the research report provisions of the FAIR Act, and Congress could have—but chose not to—harmonize the statutory definitions of ''research report'' in the FAIR Act.

FINRA intends to create a rule that furthers the purposes of the FAIR Act, protects investors, and is relatively straightforward for broker-dealers to implement. These objectives can best be achieved if the filing exclusion applies to any ''covered investment fund research report'' as defined by Rule 139b that qualifies for the Rule 139b safe harbor. The SEC has determined which research reports should be subject to the safe harbor, and FINRA sees no policy reason to create a filing exclusion for covered investment fund research reports that differs from this standard.

The FAIR Act authorizes FINRA to require members to file any covered investment fund research report the purpose of which is not to provide research and analysis of covered investment funds. FINRA could simply amend Rule 2210 by adding a filing exclusion for covered investment fund research reports, but qualifying the filing exclusion as not applying to reports the purpose of which is not to provide research and analysis of covered investment funds. While this approach would adhere to the text of the FAIR Act, FINRA believes such an approach would be difficult to apply in practice and would be inconsistent with the purpose and spirit of the FAIR Act and Rule 139b.

For example, if FINRA took this approach, members would have to first determine whether a covered investment fund research report qualifies for the Rule 139b safe harbor, and then determine if it is for the purpose of providing research and analysis of covered investment funds. This approach could create regulatory uncertainty for members, and also require more compliance resources to process reports. FINRA believes that the intent of the FAIR Act and Rule 139b is to increase the volume and publication of research reports on covered investment funds subject to appropriate conditions, and thus believes that its filing exclusion should be consistent with this approach. Moreover, FINRA believes that Rule 139b's requirements reflect the Commission's careful consideration of balancing the need for more fund research with investor protection.[39] For these reasons, FINRA proposes to exclude from filing all covered investment fund research reports that qualify for the Rule 139b safe harbor. Of course, FINRA may still review such reports through examinations, targeted sweeps, or spot checks, and such reports will remain subject to the content standards of FINRA rules governing communications with the public.[40]

Accordingly, FINRA proposes to create a new filing exclusion under Rule 2210 for ''any covered investment fund research report that is deemed for purposes of sections 2(a)(10) and 5(c) of the Securities Act not to constitute an offer for sale or offer to sell a security under Securities Act Rule 139b.'' [41] FINRA also proposes to define ''covered investment fund research report'' as having the same meaning given that term in paragraph (c)(3) of Securities Act 139b.[42]

Affiliated Research Reports

The FAIR Act and Securities Act Rule 139b define ''covered investment fund research report'' to exclude a research report to the extent that the report is published or distributed by the covered investment fund, any affiliate of the covered investment fund, or any broker or dealer that is an investment adviser (or an affiliated person of an investment adviser) for the covered investment fund.[43] Thus, research reports published or distributed by a covered investment fund, its affiliate, or any broker-dealer that is an investment adviser (or an affiliate of the investment adviser) for the covered investment fund will still have to be filed under Investment Company Act section 24(b) and FINRA Rule 2210.[44]

In some cases an investment adviser or another affiliate of a registered investment company will enter into an agreement with an unaffiliated broker-dealer to act as the principal underwriter for the fund (''third-party distributor''). Third-party distributors provide a variety of services pursuant to their distribution agreements with investment companies. Typically, these funds' investment advisers or the funds themselves prepare the retail communications concerning the funds, and then submit the communications to the third-party distributor for compliance review and filing with FINRA. These communications typically are published on the website for the fund or its investment adviser, or

[36] *See* Release, *supra* note 7, at 64196.

[37] *See supra* note 36.

[38] *See* Section 15D(d)(2) of the Exchange Act, 15 U.S.C. 78*o*–6(d)(2).

[39] *See generally* Release, *supra* note 7, at 64183–64193.

[40] *See* section 2(c)(2) of the FAIR Act; *see also* Release, *supra* note 7, at 64194 and fn. 185.

[41] *See* proposed FINRA Rule 2210(c)(7)(P) in Exhibit 5.

[42] *See* proposed FINRA Rule 2210(a)(7) in Exhibit 5.

[43] *See* section 2(f)(3) of the FAIR Act and Securities Act Rule 139b(c)(3).

[44] If a research report concerns both a covered investment fund that is an affiliate of the member that is publishing or distributing the research report, as well as a third-party fund that is not affiliated with the member publishing or distributing the report, the research report would not qualify as a covered investment fund research report. *See* Release, *supra* note 7, at 64191 (''[w]e believe extending the rule 139b safe harbor to affiliated funds in industry research reports (whether industry representation or comprehensive list reports) would not be consistent with the intent and plain language of section 2(f)(3) of the FAIR Act'').

the investment adviser or another fund affiliate requests that it be published or distributed through other media.

As the SEC noted in the Release, one factor to consider in evaluating whether a research report has been published or distributed by a person covered by the affiliate exclusion from the definition of covered investment fund research report is the extent of such person's involvement in the preparation of the research report.[45] These determinations would be based on the extent to which a person covered by the affiliate exclusion, or any person acting on its behalf, has been involved in preparing the information or explicitly or implicitly endorsed or approved the information. The Commission refers to such affiliate involvement or endorsement as ''the entanglement or adoption theory, respectively.'' [46]

Thus, FINRA will not consider research reports on covered investment funds to be excluded from filing under the proposed changes to Rule 2210 if personnel of the covered investment fund, any affiliate of the fund, or any broker-dealer that is the investment adviser or an affiliated person of the investment adviser were entangled with the preparation of the report, or had adopted its contents after it had been prepared.[47] For example, if a third-party distributor publishes or distributes research concerning a fund that was written by personnel of the fund's investment adviser, the report still would be subject to filing under Rule 2210.

If the Commission approves the proposed rule change, FINRA will announce the approval of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date of Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[48] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the FAIR Act mandates the proposed changes to the FINRA Rule 2241 quiet periods around publication of covered investment fund research reports. FINRA believes the additional proposed change to eliminate quiet periods around public appearances involving an offering of covered investment fund securities furthers the policies underlying the statutory mandate by improving information flow to investors regarding such funds. FINRA believes that the proposed filing exclusion under FINRA Rule 2210 for covered investment fund research reports that qualify for the SEC Rule 139b safe harbor is consistent with the FAIR Act's intent to increase the volume and publication of research reports on covered investment funds subject to appropriate conditions. FINRA also believes that the proposed rule change will improve efficiency and reduce regulatory burden without diminishing investor protection. As discussed above, FINRA retains other methods to review covered investment fund research reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

Economic Impact Assessment

FINRA interprets the FAIR Act as requiring it to make two changes to its rules regarding quiet periods for covered investment funds and communications filings of covered investment fund research reports. The Economic Impact Assessment considers only the impacts of the specific aspects of the proposed rule changes over which FINRA has used its discretion. The economic implications for the other aspects of the proposed rule change that are mandated by the FAIR Act can be deemed assessed as part of the Act.

In this proposal, FINRA used its discretion in two areas. First, FINRA has chosen to include research analysts' public appearances as part of the proposed exception to Rule 2241's quiet period requirements. Second, FINRA has chosen to create a new filing exclusion under 2210 for all covered investment fund research reports that qualify for the Rule 139b safe harbor rather than just the reports that are for research and analysis purposes.

Regulatory Need

Consistent with requirements in the FAIR Act, FINRA is proposing to amend Rule 2241 to eliminate the Rule's quiet periods for the publication of research reports concerning covered investment funds where the member is also participating in a registered offering or other distribution of the fund. Although not specifically addressed by the FAIR Act, quiet periods for public appearances by research analysts that are responsible for covered investment fund research reports will also be eliminated. FINRA believes that including public appearances in the proposed amendments is consistent with how FINRA has traditionally viewed them vis-à-vis research reports and is in accordance with the spirit of the FAIR Act.

FINRA is also proposing to amend Rule 2210 to create a new filing exclusion for any covered investment fund research report that qualifies for the Rule 139b safe harbor. The FAIR Act authorizes FINRA to continue to require members to file any covered investment fund research reports whose purpose is for something other than research and analysis of covered investment funds. FINRA has chosen to exclude from Rule 2210 filing requirements all covered investment fund research reports that qualify for the safe harbor under Rule 139b regardless of their purpose.

Economic Baseline and Impact

Quiet Period

Currently under Rule 2241, members must establish policies and procedures that prohibit research analysts that produce ''research reports'' as defined under that rule from making public appearances during specified quiet periods following the offering of an equity security. As Rule 2241 does not apply to research reports concerning mutual funds, this proposed change will only affect public appearances by analysts responsible for reports concerning other types of equity securities, including covered investment funds such as BDCs, commodity or currency funds.

The proposed rule change will create a new exception from the Rule's quiet period requirements for the publication or distribution of research reports and research analysts' public appearances. Elimination of the quiet period for research analysts' public appearances will allow analysts to provide the same information contemporaneously through both research reports and public

[45] *See* Release, *supra* note 7, at 64182.

[46] *See supra* note 45.

[47] *See* Release, *supra* note 7, at 64181–64183 (discussion of affiliate exclusion).

[48] 15 U.S.C. 78*o*–3(b)(6).

appearances. However, the elimination of the quiet period could increase the risk that research analysts make misleading statements in public appearances at an earlier date. This risk is mitigated by the other aspects of Rule 2241, including identifying and managing conflicts of interest, with which members are still required to comply.

Communications Filings

Currently Rule 2210 requires members to file within 10 business days of first use or publication certain retail communications including covered investment fund research reports that would qualify under the Rule 139b safe harbor. FINRA is proposing to create a new filing exclusion under Rule 2210 for all covered investment fund research reports that qualify for the safe harbor under Rule 139b regardless of their purpose.

Between 2016 and 2018, approximately 381 covered investment fund research reports were filed by members unaffiliated with the covered investment fund. Over 90 percent of these reports were filed by three member firms. FINRA does not know how many of the filings were for purposes other than research and analysis. Members that currently file these types of reports will benefit through savings on the administrative costs associated with tracking filing deadlines for the communications and with the time and effort to put together the filings as well as fees associated with filing the reports. Alternatively, the exclusion of these reports from filing requirements could increase risks to investors. Lower costs could increase the number of non-research related reports on unaffiliated covered investment funds published by members. Further, members may risk including more biased or misleading statements in the reports given the lack of immediate FINRA oversight.

This risk to investors is mitigated by two factors. First, only reports published or distributed by a member unaffiliated with the covered investment fund qualify for the exclusion. Members unaffiliated with the covered investment fund have a lower incentive to provide misleading information than those affiliated with the fund. Second, FINRA continues to have the ability to review these communications as part of the examination process or through a sweep or spot checks.

Alternatives Considered

FINRA considered excluding from the Rule's filing requirements only those covered investment fund research reports whose purpose is to provide research and analysis of the covered investment funds. If FINRA carved out of the proposed exclusion non-research related reports, members would be required to first evaluate whether the report was covered under the safe harbor and then determine whether its purpose was for research and analysis or something else. This additional evaluation criterion could lead to higher compliance costs and greater regulatory uncertainty, especially for those members that publish or distribute a high number of covered investment fund research reports. While this requirement could reduce risks to investors, FINRA believes that the reduced risk is not commensurate with the increased costs to members in complying with the rule and would be inconsistent with the purpose and spirit of the FAIR Act and Rule 139b.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2019–017 and should be submitted on or before July 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–14402 Filed 7–5–19; 8:45 am]

BILLING CODE 8011–01–P

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86269 File No. PCAOB–2019–005]

Public Company Accounting Oversight Board; Order Granting Approval of Auditing Standard 2501, *Auditing Accounting Estimates, Including Fair Value Measurements,* and Related Amendments to PCAOB Auditing Standards

July 1, 2019.

I. Introduction

On March 20, 2019, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b)[2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), a proposal to adopt Auditing Standard 2501, *Auditing Accounting Estimates, Including Fair Value Measurements* and related amendments to PCAOB auditing standards (collectively, the ''Proposed Rules'').[3] The Proposed Rules were published for comment in the **Federal Register** on April 4, 2019.[4] At the time the notice was issued, the Commission extended to July 3, 2019 the date by which the Commission should take action on the Proposed Rules.[5] We received four comment letters in response to the notice.[6] This order approves the Proposed Rules, which we find to be consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

II. Description of the Proposed Rules

On December 20, 2018, the Board adopted AS 2501, *Auditing Accounting Estimates, Including Fair Value Measurements* and related amendments to PCAOB auditing standards.[7] The Proposed Rules are intended to strengthen and enhance the requirements for auditing accounting estimates, including fair value measurements, by replacing the existing three standards[8] with a single standard that sets forth a uniform, risk-based approach. The requirements contained within the Proposed Rules are discussed further below.

A. Changes to PCAOB Standards

The Proposed Rules include a single standard that replaces the accounting estimates standard, the fair value standard, and the derivatives standard.[9] The Proposed Rules also include a special topics appendix that addresses certain matters relevant to auditing the fair value of financial instruments. In addition, the Proposed Rules include amendments to several other PCAOB auditing standards to align them with the new standard on auditing accounting estimates. The Proposed Rules will make the following changes to existing requirements:

- Provide direction to prompt auditors to devote greater attention to addressing potential management bias in accounting estimates, as part of applying professional skepticism. In this regard, the Proposed Rules:
  - Amend AS 2110, *Identifying and Assessing Risks of Material Misstatement* to require a discussion among the key engagement team members of how the financial statements could be manipulated through management bias in accounting estimates in significant accounts and disclosures;
  - Emphasize certain key requirements to focus auditors on their obligations, when evaluating audit results, to exercise professional skepticism, including evaluating whether management bias exists;
  - Remind auditors that audit evidence includes both information that supports and corroborates the company's assertions regarding the financial statements and information that contradicts such assertions;
  - Require the auditor to identify significant assumptions used by the company and describe matters the auditor should take into account when identifying those assumptions;
  - Provide examples of significant assumptions (important to the recognition or measurement of the accounting estimate), such as assumptions that are susceptible to manipulation or bias;
  - Emphasize requirements for the auditor to evaluate whether the company has a reasonable basis for the significant assumptions used and, when applicable, for its selection of assumptions from a range of potential assumptions;
  - Explicitly require the auditor, when developing an independent expectation of an accounting estimate, to have a reasonable basis for the assumptions and method he or she uses;
  - Require that the auditor obtain an understanding of management's analysis of critical accounting estimates and take that understanding into account when evaluating the reasonableness of significant assumptions and potential management bias;
  - Recast certain existing requirements using terminology that encourages maintaining a skeptical mindset, such as ''evaluate'' and ''compare'' instead of ''corroborate;''
  - Strengthen requirements for evaluating whether data was appropriately used by a company that build on requirements in the fair value standard, and include a new requirement for evaluating whether a company's change in the source of data is appropriate;
  - Clarify the auditor's responsibilities for evaluating data that build on the

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[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] The PCAOB staff originally issued a staff consultation paper on this matter in 2014. *See Auditing Accounting Estimates and Fair Value Measurements* (Aug. 19, 2014), *available at https://pcaobus.org/Standards/Documents/SCP_Auditing_Accounting_Estimates_Fair_Value_Measurements.pdf.* In 2017, the Board issued a proposed rule. *See Proposed Auditing Standard—Auditing Accounting Estimates, Including Fair Value Measurements and Proposed Amendments to PCAOB Auditing Standards*, PCAOB Release No. 2017–002 (June 1, 2017) (''PCAOB Proposal''), *available at https://pcaobus.org/Rulemaking/Docket043/2017-002-auditing-accounting-estimates-proposed-rule.pdf.*

[4] *See* Release No. 34–85434 *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Auditing Accounting Estimates, Including Fair Value Measurements, and Amendments to PCAOB Auditing Standards* (Mar. 28, 2019), 84 FR 13396 (Apr. 4, 2019) *available at https://www.sec.gov/rules/pcaob/2019/34-85434.pdf.*

[5] *See id.*

[6] We received comment letters from Deloitte & Touche LLP, April 10, 2019 (''Deloitte Letter''); the Council of Institutional Investors, April 18, 2019 (''CII Letter''); PricewaterhouseCoopers LLP, April 25, 2019 (''PwC Letter''); and the Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, April 25, 2019 (''CCMC Letter''). Copies of the comment letters received on the Commission order noticing the Proposed Rules are available on the Commission's website at *https://www.sec.gov/comments/pcaob-2019-02/pcaob201902.htm.*

[7] *See Auditing Accounting Estimates, Including Fair Value Measurements and Amendments to PCAOB Auditing Standards,* PCAOB Release No. 2018–005 (Dec. 20, 2018) (''PCAOB Adopting Release''), *available at https://pcaobus.org/Rulemaking/Docket043/2018-005-estimates-final-rule.pdf.*

[8] *See* Auditing Standard (''AS'') 2501, *Auditing Accounting Estimates* (originally issued in April 1988), which applies to auditing accounting estimates in general (''accounting estimates standard''); AS 2502, *Auditing Fair Value Measurements and Disclosures* (originally issued January 2003), which applies to auditing the measurement and disclosure of assets, liabilities, and specific components of equity presented or disclosed at fair value in financial statements (''fair value standard''); and AS 2503, *Auditing Derivative Instruments, Hedging Activities, and Investments in Securities* (originally issued in September 2000), which applies to auditing financial statement assertions for derivative instruments, hedging activities, and investments in securities (''derivatives standard'').

[9] *See id.*

existing requirements in AS 1105, *Audit Evidence;* and

○ Amend AS 2401, *Consideration of Fraud in a Financial Statement Audit,* to clarify the auditor's responsibilities when performing a retrospective review of accounting estimates and align them with the requirements in the new standard.

• Extend certain key requirements in the fair value standard to other accounting estimates in significant accounts and disclosures to reflect a more uniform approach to substantive testing. For estimates not currently subject to the fair value standard, this will:

○ Refine the three substantive approaches common to the accounting estimates standard to include more specificity, similar to the fair value standard;

○ Describe the auditor's responsibilities for testing the individual elements of the company's process used to develop the estimate (*i.e.,* methods, data, and significant assumptions);

○ Set forth express requirements for the auditor to evaluate the company's methods for developing the estimate, including whether the methods are:

■ In conformity with the requirements of the applicable financial reporting framework; and

■ Appropriate for the nature of the related account or disclosure, taking into account the auditor's understanding of the company and its environment; and

○ Require the auditor to take into account certain factors in determining whether significant assumptions that are based on the company's intent and ability to carry out a particular course of action are reasonable.

• Further integrate requirements with the Board's risk assessment standards [10] to focus auditors on estimates with greater risk of material misstatement. The Proposed Rules incorporate specific requirements relating to accounting estimates in AS 2110 and AS 2301 to inform the necessary procedures for auditing accounting estimates. Specifically, the Proposed Rules will:

○ Amend AS 2110 to include risk factors specific to identifying significant accounts and disclosures involving accounting estimates;

○ Align the scope of the Proposed Rules with AS 2110 to apply to accounting estimates in significant accounts and disclosures;

○ Amend AS 2110 to set forth requirements for obtaining an understanding of the company's process for determining accounting estimates;

○ Require auditors to respond to significantly differing risks of material misstatement in the components of accounting estimates, consistent with AS 2110;

○ Remind auditors of their responsibility to evaluate conformity with the applicable financial reporting framework, reasonableness, and potential management bias and its effect on the financial statements when responding to the risks of material misstatement in accounting estimates in significant accounts and disclosures;

○ Require the auditor, when identifying significant assumptions, to take into account the nature of the accounting estimate, including related risk factors, the applicable financial reporting framework, and the auditor's understanding of the company's process for developing the estimate;

○ Include matters relevant to identifying and assessing risks of material misstatement related to the fair value of financial instruments;

○ Add a note in AS 2301 to emphasize that performing substantive procedures for the relevant assertions of significant accounts and disclosures involves testing whether the significant accounts and disclosures are in conformity with the applicable financial reporting framework; and

○ Add a note to AS 2301 providing that for certain estimates involving complex models or processes, it might be impossible to design effective substantive tests that, by themselves, would provide sufficient appropriate evidence regarding the assertions.

• Make other updates to the requirements for auditing accounting estimates, including:

○ Update the description of what constitutes an accounting estimate to encompass the general characteristics of the variety of accounting estimates, including fair value measurements, in financial statements;

○ Set forth specific requirements for evaluating data and pricing information used by the company or the auditor that build on the existing requirements in AS 1105;

○ Establish more specific requirements for developing an independent expectation that vary depending on the source of data, assumptions or methods used by the auditor and build on AS 2810 to provide a requirement when developing an independent expectation as a range; and

○ Relocate requirements in the derivatives standard for obtaining audit evidence when the valuation of investments is based on investee results as an appendix to AS 1105.

• Provide specific requirements and direction to address auditing the fair value of financial instruments, including:

○ Establish requirements to determine whether pricing information obtained from third parties, such as pricing services and brokers or dealers, provides sufficient appropriate audit evidence, including:

■ Focus auditors on the relevance and reliability of pricing information from third-party sources,[11] regardless of whether the pricing information was obtained by the company or the auditor;

■ Establish factors that affect relevance and reliability of pricing information obtained from a pricing service;

■ Require the auditor to perform additional audit procedures to evaluate the process used by the pricing service when fair values are based on transactions of similar financial instruments;

■ Require the auditor to perform additional procedures on pricing information obtained from a pricing service when no recent transactions have occurred for either the financial instrument being valued or similar financial instruments;

■ Establish conditions under which less information is needed about particular methods and inputs of individual pricing services in circumstances where prices are obtained from multiple pricing services; and

■ Establish factors that affect the relevance and reliability of quotes from brokers or dealers.

○ Require the auditor to understand, if applicable, how unobservable inputs were determined and evaluate the reasonableness of unobservable inputs.

B. Applicability and Effective Date

The Proposed Rules would be effective for audits of financial statements for fiscal years ending on or after December 15, 2020. The PCAOB has proposed application of the Proposed Rules to include audits of emerging growth companies (''EGCs''),[12]

[10] The Board's ''risk assessment standards'' include AS 1101, *Audit Risk;* AS 1105; AS 1201, *Supervision of the Audit Engagement;* AS 2101, *Audit Planning;* AS 2105, *Consideration of Materiality in Planning and Performing an Audit;* AS 2110; AS 2301, *The Auditor's Responses to the Risks of Material Misstatement;* and AS 2810, *Evaluating Audit Results.*

[11] The requirements in this area focus primarily on pricing information from pricing services and brokers or dealers, but also cover pricing information obtained from other third-party pricing sources, such as exchanges and publishers of exchange prices.

[12] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). *See also* Release No. 33–10332 *Inflation Adjustments and Other Technical*

Continued

as discussed in Section IV below, and audits of brokers and dealers under Exchange Act Rule 17a–5.

III. Comment Letters

The comment period on the Proposed Rules ended on April 25, 2019. We received four comment letters from accounting firms, an investor association, and an issuer organization.[13] Commenters generally supported the Proposed Rules.[14] Most commenters encouraged us to support the PCAOB's plans to monitor implementation, conduct post-implementation review, or monitor advancements in technology that may affect application of the Proposed Rules.[15] One commenter raised concerns regarding the effective date due to other financial reporting activities that need to be implemented and the potential impact on smaller audit firms.[16]

The Sarbanes-Oxley Act requires us to determine whether the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws or are necessary or appropriate in the public interest or for the protection of investors.[17] In making this determination, we have considered the comments we received, as well as the feedback received and modifications made by the PCAOB throughout its rulemaking process. The discussion below addresses the significant points raised in the comment letters we received.

A. General Support for the Proposed Rules

Commenters generally supported the Proposed Rules, including strengthening the audit requirements by applying a more uniform, risk-based approach to the audit of accounting estimates, including fair value measurements.[18] One commenter agreed with the Board's view that the evolution of financial reporting frameworks has resulted in the expanded use of estimates and expressed support for a single, more uniform principles-based standard to address the auditing of accounting estimates, including fair value measurements, that is aligned with the Board's risk assessment standards.[19] Another commenter stressed the need for the Proposed Rules because accounting estimates, and particularly fair value measurements and related disclosures, provide investors with ''more useful information than amounts that would be reported under amortized cost or other existing alternative accounting approaches'' and because the PCAOB has observed numerous deficiencies in auditing accounting estimates.[20] The commenter also indicated that the Proposed Rules will strengthen auditor responsibilities, improve audit quality, and further investor protection.[21]

B. Implementation Efforts

Most commenters noted their desire for ongoing monitoring by the PCAOB if the Proposed Rules are approved.[22] Two commenters specifically supported the PCAOB's plan [23] to monitor implementation, including advances in technology and any related effects on the application of the proposed amendments.[24] Another commenter recommended that the Commission, as part of its oversight of the PCAOB, should request that the PCAOB periodically update the Commission on the PCAOB's activities for monitoring the implementation of the Proposed Rules along with the PCAOB's findings and responses to these activities, including the PCAOB's plans for a post-implementation review.[25]

In the PCAOB Adopting Release, the Board stated it would monitor implementation to determine whether additional interpretive guidance is necessary, including monitoring the advancement of technology.[26] In addition, the PCAOB has an established program to conduct post-implementation reviews of its rules and standards to evaluate the overall effect of significant rulemakings.[27]

We acknowledge the importance of monitoring the implementation of the Proposed Rules. The Commission staff works closely with the PCAOB as part of our general oversight mandate.[28] As part of that oversight, Commission staff will keep itself apprised of the PCAOB's activities for monitoring the implementation of the Proposed Rules and update the Commission, as necessary.

C. The Effective Date of the Proposed Rules

As noted above, the Proposed Rules would be effective for audits of financial statements for fiscal years ending on or after December 15, 2020. One commenter expressed concerns related to the effective date as a result of other financial reporting activities, including upcoming effective dates of certain Financial Accounting Standards Board (''FASB'') projects, other PCAOB standards, and a view that smaller audit firms may be disproportionately impacted.[29] The commenter suggested a phased implementation of the Proposed Rules. Specifically, the commenter recommended, as an example, that the Commission allow triennially inspected audit firms [30] to elect an effective date of audits for fiscal years ending on or after December 15, 2021, while also permitting earlier implementation since smaller audit firms may be disproportionally impacted.[31] The commenter further expressed the belief that a phased implementation may facilitate post-implementation reviews of the Proposed Rules.[32]

In the PCAOB Adopting Release, the Board recognized the effort required for other implementation efforts, but stated the effective date determined by the Board was designed to provide auditors with a reasonable period of time to implement the Proposed Rules, without unduly delaying the intended benefits of the Proposed Rules.[33]

Amendments Under Titles I and III of the JOBS Act (Mar. 31, 2017), 82 FR 17545 (Apr. 12, 2017).

[13] *See* Deloitte Letter, PwC Letter, CII Letter, and CCMC Letter.

[14] *See* Deloitte Letter, PwC Letter, CII Letter, and CCMC Letter.

[15] *See e.g.,* Deloitte Letter; PwC Letter, and CCMC Letter.

[16] *See* CCMC Letter.

[17] *See* Section 107(b)(3) of the Sarbanes-Oxley Act. The Sarbanes-Oxley Act also specifies that the provisions of Section 19(b) of the Exchange Act shall govern the proposed rules of the Board. *See* Section 107(b)(4) of the Sarbanes-Oxley Act. Section 19 of the Exchange Act covers the registration, responsibilities, and oversight of self-regulatory organizations. Under the procedures prescribed by the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, the Commission must either approve or disapprove, or institute proceedings to determine whether the proposed rules of the Board should be disapproved; and these procedures do not expressly permit the Commission to amend or supplement the proposed rules of the Board.

[18] *See* Deloitte Letter, CII Letter, PwC Letter, and CCMC Letter.

[19] *See* PwC Letter.

[20] *See* CII Letter.

[21] *See id.*

[22] *See e.g.,* Deloitte Letter, PwC Letter, and CCMC Letter.

[23] *See* PCAOB Adopting Release at 3, 21, and 46.

[24] *See* Deloitte Letter and CCMC Letter.

[25] *See* CCMC Letter.

[26] *See* PCAOB Adopting Release at 3, 21, and 46.

[27] *See* PCAOB website at *https://pcaobus.org/EconomicAndRiskAnalysis/pir/Pages/default.aspx.*

[28] *See* Section 107 of the Sarbanes-Oxley Act.

[29] *See* CCMC Letter.

[30] ''Triennially inspected audit firms'' are audit firms that, in accordance with PCAOB Rule 4003(b), are required to be inspected at least once in every three calendar years if, during that time, the audit firm issued an audit report for at least one issuer but no more than 100 issuers. An audit firm is required to be inspected on an annual basis if, during the prior calendar year, it issued audit reports for more than 100 issuers (''annually inspected audit firms). *See* PCAOB Rule 4003, *Frequency of Inspections, available at https://pcaobus.org/Rules/Pages/Section_4.aspx.*

[31] *See* CCMC Letter.

[32] *See id.*

[33] *See* PCAOB Adopting Release at 58.

We believe the Board has appropriately balanced the amount of time needed by audit firms to implement the Proposed Rules with the objectives of, and benefits obtained from, the Proposed Rules. In this regard, we note that, aside from the commenter who suggested that the Commission consider a phased implementation approach, we received no other comments from audit firms, including triennially inspected audit firms, requesting a phased implementation.

In addition, there could be practical implications of allowing for a phased implementation approach related to an auditor performance standard.[34] For example, audits of multi-national companies often involve the work of more than one auditor conducted in accordance with AS 1205, *Part of the Audit Performed by Other Independent Auditors* (''AS 1205''), wherein a principal auditor may provide instructions to the other auditors. Under a phased implementation approach, an annually inspected audit firm serving as the principal auditor may instruct a triennially inspected audit firm to follow the Proposed Rules before the triennially inspected audit firm has implemented the Proposed Rules. This approach could create challenges for the triennially inspected audit firm as it would be instructed to implement the Proposed Rules on individual engagements even though it may not have updated its methodologies or trained its professionals on the Proposed Rules, which could have a negative effect on audit quality.

Further, within the Global Networks of accounting firms,[35] many of the affiliated accounting firms outside the United States are triennially inspected audit firms. Many of these affiliated firms participate in the multi-national audits discussed above. Our understanding is that these arrangements make it more practical for the Global Network Firms to adopt the Proposed Rules simultaneously across their respective networks. As a result, the Global Network Firms may not delay implementation for the triennially inspected audit firms within their network.

Based on these considerations, we do not believe a phased implementation approach for the Proposed Rules, including providing triennially inspected audit firms with the option to delay implementation, is necessary or appropriate in the public interest or for the protection of investors.

IV. Effect on Emerging Growth Companies

In the PCAOB Adopting Release, the Board recommended that the Commission determine that the Proposed Rules apply to audits of EGCs.[36] Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act of 2012, requires that any rules of the Board ''requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis)'' shall not apply to an audit of an EGC. The provisions of the Proposed Rules do not fall into these categories.

Section 103(a)(3)(C) further provides that ''[a]ny additional rules'' adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs ''unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.'' The Proposed Rules fall within this category. Having considered those statutory factors, we find that applying the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest.

The PCAOB provided information identified by the Board's staff from public sources, including data and analysis of EGCs that sets forth its views as to why it believes the Proposed Rules should apply to audits of EGCs. To inform consideration of the application of auditing standards to audits of EGCs, the PCAOB staff has also published a white paper that provides general information about characteristics of EGCs (''EGC White Paper'').[37] In addition, the Board sought public input on the application of the Proposed Rules to the audits of EGCs.[38] Commenters who addressed this question supported applying the proposed requirements to audits of EGCs, citing benefits to the users of EGC financial statements and the risk of confusion and inconsistency if different methodologies were required for EGC and non-EGC audits.[39]

In the PCAOB Adopting Release, the Board expressed its belief that accounting estimates are common in the financial statements of many EGCs.[40] The Board also noted that data from 2012–2016 reported inspection findings for audits of EGCs indicated a relatively high number of deficiencies (*i.e.,* 45%-60% of Part I findings on audits of EGCs) related to the accounting estimates standard and the fair value standard.[41] The PCAOB further observed that ''[s]ince EGCs tend to be smaller public companies, their accounting estimates may be less likely to involve complex processes, although those estimates may constitute some of the largest accounts in EGCs' financial statements.'' [42] The Board noted that the Proposed Rules are ''risk-based and scalable for firms of all sizes,'' and expressed the view that ''any related cost increases are justified by expected improvements in audit quality.'' [43]

Additionally, the PCAOB Adopting Release noted that ''any new PCAOB standards and amendments to existing standards determined not to apply to the audits of EGCs would require auditors to address the differing requirements within their methodologies, which would create the potential for confusion.'' [44] In the EGC White Paper, the PCAOB staff stated that ''[a]pproximately 99% of EGC filers were audited by accounting firms that also audit issuers that are not EGC filers.'' [45]

The PCAOB Adopting Release also noted EGCs generally tend to have

[34] The CCMC Letter references differences in considering a phased implementation approach for an auditor performance standard as compared to an auditor reporting standard, which is why it did not suggest a phased implementation approach based on issuer size similar to the auditor communicating critical audit matters in accordance with AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion.*

[35] *See* PCAOB website for a listing of ''Global Networks'' and further discussion, *available at https://pcaobus.org/Registration/Firms/Pages/GlobalNetworkFirms.aspx.*

[36] *See* PCAOB Adopting Release at 56.

[37] *See Characteristics of Emerging Growth Companies as of November 15, 2017* (Oct. 11, 2018), *available at https://pcaobus.org/EconomicAndRiskAnalysis/Documents/White-Paper-Characteristics-Emerging-Growth-Companies-November-2017.pdf.*

[38] *See* PCAOB Proposal; *see also,* comment letters provided to the PCAOB related to this matter, *available at https://pcaobus.org/Rulemaking/Pages/docket-043-comments-auditing-accounting-estimates-fair-value-measurements.aspx.*

[39] *See* PCAOB Adopting Release at 53.

[40] *See id* at 53. The five Standard Industrial Classification (SIC) codes with the highest total assets as a percentage of the total assets for the EGC population are: (i) Real estate investment trusts; (ii) state commercial banks; (iii) national commercial banks; (iv) crude petroleum and natural gas; and (v) pharmaceutical preparations. *See* EGC White Paper at 14–15. In the PCAOB Adopting Release, the Board noted that financial statements of companies operating in these industries would likely have accounting estimates that include, for example, asset impairments and allowances for loan losses.

[41] *See* PCAOB Adopting Release at 55–56.

[42] *See id* at 54.

[43] *See id* at 45.

[44] *See id* at 53.

[45] *See* EGC White Paper at 20.

shorter financial reporting histories and as a result, there is less information available to investors regarding such companies relative to the broader population of public companies.[46] As such, the Proposed Rules, which are intended to enhance audit quality, could increase the credibility of financial statement disclosures by EGCs.[47]

We agree with the Board's analysis. We believe the Proposed Rules will benefit EGCs at least as much as non-EGCs, in part, because of the prevalence of accounting estimates in financial statements of many EGCs. Specifically, we agree with the Board applying the Proposed Rules to EGCs would be consistent with the objective of the Proposed Rules to provide a more uniform, risk-based approach to auditing accounting estimates but also provide a scalable approach for firms of all sizes. Additionally, we also agree with the Board that Proposed Rules could increase the credibility of the financial statement disclosures by EGCs.

As such, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, we believe there is a sufficient basis to determine that applying the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules, the information submitted therewith by the PCAOB, and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB–2019–005) be and hereby are approved.

[46] *See* PCAOB Adopting Release at 54.

[47] *See id* at 54.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–14411 Filed 7–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86270; File No. PCAOB–2019–006]

Public Company Accounting Oversight Board; Order Granting Approval of Amendments to Auditing Standards for Auditor's Use of the Work of Specialists

July 1, 2019.

I. Introduction

On March 20, 2019, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b)[2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), a proposal to adopt amendments to auditing standards for auditor's use of the work of specialists (collectively, the ''Proposed Rules'').[3] The Proposed Rules were published for comment in the **Federal Register** on April 4, 2019.[4] At the time the notice was issued, the Commission extended to July 3, 2019 the date by which the Commission should take action on the Proposed Rules.[5] We received four comment letters in response to the notice.[6] This order approves the Proposed Rules, which we find to be consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

II. Description of the Proposed Rules

On December 20, 2018, the Board adopted amendments to auditing standards for using the work of specialists.[7] The Proposed Rules are intended to strengthen the requirements that apply when auditors use the work of specialists in an audit.[8] The Proposed Rules relate to an auditor's evaluation of the work of a company's specialist, whether employed or engaged by the company, and apply a supervisory approach to both auditor-employed and auditor-engaged specialists.

A. Changes to PCAOB Standards

The Proposed Rules primarily amend two existing PCAOB auditing standards and retitle and replace a third auditing standard.[9] The Proposed Rules will make the following changes to existing requirements:

- *Amend AS 1105*
  - Adds a new Appendix A that supplements the requirements in AS 1105 for circumstances when the auditor uses the work of the company's specialist as audit evidence, related to:
- Obtaining an understanding of the work and report(s), or equivalent communication, of the company's specialist(s) and related company processes and controls;
- Obtaining an understanding of and assessing the knowledge, skill, and ability of a company's specialist and the entity that employs the specialist (if other than the company) and the relationship to the company of the specialist and the entity that employs the specialist (if other than the company); and

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] The PCAOB staff originally issued a staff consultation paper on this matter in 2015. *See The Auditor's Use of the Work of Specialists,* PCAOB Staff Consultation Paper No. 2015–01 (May 28, 2015), *available at https://pcaobus.org/Standards/Documents/SCP-2015-01_The_Auditor's_Use_of_the_Work_of_Specialists.pdf.* In 2017, the Board issued a proposed rule. *See Proposed Amendments to Auditing Standards for Auditor's Use of the Work of Specialists,* PCAOB Release No. 2017–003 (June 1, 2017) (''PCAOB Proposal''), *available at https://pcaobus.org/Rulemaking/Docket044/2017-003-specialists-proposed-rule.pdf.*

[4] *See* Release No. 34–85435, *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to Auditing Standards for Auditor's Use of the Work of Specialists,* (Mar. 28, 2019), 84 FR 13442 (Apr. 4, 2019).

[5] *See id.*

[6] We received comment letters from Deloitte & Touche LLP, April 10, 2019 (''Deloitte Letter''); the Council of Institutional Investors, April 18, 2019 (''CII Letter''); PricewaterhouseCoopers LLP, April 25, 2019 (''PwC Letter''); and the Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, April 25, 2019 (''CCMC Letter''). Copies of the comment letters received on the Commission order noticing the Proposed Rules are available on the Commission's website at *https://www.sec.gov/comments/pcaob-2019-03/pcaob201903.htm.*

[7] *See Amendments to Auditing Standards for Auditor's Use of the Work of Specialists,* PCAOB Release No. 2018–006 (Dec. 20, 2018) (''PCAOB Adopting Release''), *available at https://pcaobus.org/Rulemaking/Docket044/2018-006-specialists-final-rule.pdf.*

[8] In the Proposed Rules, a specialist is defined generally as a person (or firm) possessing special skill or knowledge in a particular field other than accounting or auditing.

[9] The Proposed Rules: (1) Add an appendix to Auditing Standard (''AS'') 1105, *Audit Evidence,* with supplemental requirements for using the work of a company's specialist as audit evidence; (2) add an appendix to AS 1201, *Supervision of the Audit Engagement,* with supplemental requirements for supervising an auditor-employed specialist; and (3) replace existing AS 1210, *Using the Work of a Specialist,* with an updated standard titled, *Using the Work of an Auditor-Engaged Specialist,* for using the work of an auditor-engaged specialist.

• Performing procedures to evaluate the work of a company's specialist, including evaluating: (i) The data, significant assumptions, and methods (which may include models) used by the specialist, and (ii) the relevance and reliability of the specialist's work and its relationship to the relevant assertion.

o Aligns the requirements for using the work of a company's specialist with the risk assessment standards [10] and the standard and related amendments adopted by the Board on auditing accounting estimates, including fair value measurements; and

○ Sets forth factors for determining the necessary evidence to support the auditor's conclusion regarding a relevant assertion when using the work of a company's specialist.

• *Amend AS 1201*

○ Adds a new Appendix C that supplements the requirements for applying the supervisory principles in AS 1201.05–.06 when using the work of an auditor-employed specialist to assist the auditor in obtaining or evaluating audit evidence, including requirements related to:

• Informing the auditor-employed specialist of the work to be performed;

• Coordinating the work of the auditor-employed specialists with the work of other engagement team members; and

• Reviewing and evaluating whether the work of the auditor-employed specialist provides sufficient appropriate evidence. Evaluating the work of the specialist includes evaluating whether the work is in accordance with the auditor's understanding with the specialist and whether the specialist's findings and conclusions are consistent with, among other things, the work performed by the specialist.

○ Sets forth factors for determining the necessary extent of supervision of the work of the auditor-employed specialist.

• *Replace existing AS 1210*

○ Replaces the existing standard with AS 1210, as amended, which establishes requirements for using the work of an auditor-engaged specialist to assist the auditor in obtaining or evaluating audit evidence;

○ Includes requirements for reaching an understanding with an auditor-engaged specialist on the work to be performed and reviewing and evaluating the specialist's work that parallel the final amendments to AS 1201 for auditor-employed specialists;

○ Sets forth factors for determining the necessary extent of review of the work of the auditor-engaged specialist;

○ Amends requirements related to assessing the knowledge, skill, ability, and objectivity of the auditor-engaged specialist; and

○ Describes objectivity, for purposes of the standard, as the auditor-engaged specialist's ability to exercise impartial judgment on all issues encompassed by the specialist's work related to the audit; and specify the auditor's obligations when the specialist or the entity that employs the specialist has a relationship with the company that affects the specialist's objectivity.

B. Applicability and Effective Date

The Proposed Rules would be effective for audits of financial statements for fiscal years ending on or after December 15, 2020. The PCAOB has proposed application of the Proposed Rules to include audits of emerging growth companies (''EGCs''),[11] as discussed in Section IV below, and audits of brokers and dealers under Exchange Act Rule 17a–5.

III. Comment Letters

The comment period on the Proposed Rules ended on April 25, 2019. We received four comment letters from accounting firms, an investor association, and an issuer organization.[12] Commenters generally supported the Proposed Rules.[13] Most commenters encouraged us to support the PCAOB's plans to monitor implementation, conduct post implementation review, or monitor advancements in technology that may affect application of the Proposed Rules.[14] One commenter also raised concerns regarding the effective date due to other financial reporting activities that need to be implemented and the potential impact on smaller audit firms.[15]

The Sarbanes-Oxley Act requires us to determine whether the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws or are necessary or appropriate in the public interest or for the protection of investors.[16] In making this determination, we have considered the comments we received, as well as the feedback received and modifications made by the PCAOB throughout its rulemaking process. The discussion below addresses the significant points raised in the comment letters we received.

A. General Support for the Proposed Rules

Commenters generally supported the Proposed Rules, including the objective to strengthen the requirements that apply when auditors use the work of specialists in an audit.[17] One commenter noted that the proposed amendments address the need to differentiate, define, and provide scalability of the requirements based on the nature of a specialist's involvement in the context of an audit as well as the identified risk of material misstatement to which the specialist's work relates, which the commenter indicated will achieve greater consistency in practice.[18] Another commenter agreed with the Board that the Proposed Rules will benefit investors ''because the application of the requirements should result in more consistently rigorous practices among auditors when using the work of a company's specialist in their audits, as well as a more consistent approach to the supervision of auditor-employed and auditor-engaged specialists.'' [19]

B. Implementation Efforts

Most commenters noted their desire for ongoing monitoring by the PCAOB if the Proposed Rules are approved.[20] Two commenters specifically supported the PCAOB's plan [21] to monitor

[10] The Board's ''risk assessment standards'' include AS 1101, *Audit Risk;* AS 1105; AS 1201; AS 2101, *Audit Planning;* AS 2105, *Consideration of Materiality in Planning and Performing an Audit;* AS 2110, *Identifying and Assessing Risks of Material Misstatement;* AS 2301, *The Auditor's Responses to the Risks of Material Misstatement;* and AS 2810, *Evaluating Audit Results.*

[11] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). *See also* Release No. 33–10332 *Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act* (Mar. 31, 2017), 82 FR 17545 (Apr. 12, 2017).

[12] *See* Deloitte Letter, PwC Letter, CII Letter, and CCMC Letter.

[13] *See* Deloitte Letter, PwC Letter, CII Letter, and CCMC Letter.

[14] *See e.g.,* Deloitte Letter, PwC Letter, and CCMC Letter.

[15] *See* CCMC Letter.

[16] *See* Section 107(b)(3) of the Sarbanes-Oxley Act. The Sarbanes-Oxley Act also specifies that the provisions of Section 19(b) of the Exchange Act shall govern the proposed rules of the Board. *See* Section 107(b)(4) of the Sarbanes-Oxley Act. Section 19 of the Exchange Act covers the registration, responsibilities, and oversight of self-regulatory organizations. Under the procedures prescribed by the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, the Commission must either approve or disapprove, or institute proceedings to determine whether the proposed rules of the Board should be disapproved; and these procedures do not expressly permit the Commission to amend or supplement the proposed rules of the Board.

[17] *See* Deloitte Letter, CII Letter, PwC Letter, and CCMC Letter.

[18] *See* Deloitte Letter.

[19] *See* CII Letter.

[20] *See e.g.,* Deloitte Letter, PwC Letter, and CCMC Letter.

[21] *See* PCAOB Adopting Release at 5 and 60.

implementation, including advances in technology and any related effects on the application of the proposed amendments.[22] Another commenter recommended that the Commission, as part of its oversight of the PCAOB, should request that the PCAOB periodically update the Commission on the PCAOB's activities for monitoring the implementation of the Proposed Rules along with the PCAOB's findings and responses to these activities, including the PCAOB's plans for a post-implementation review.[23]

In the PCAOB Adopting Release, the Board stated it would monitor implementation to determine whether additional interpretive guidance is necessary, including monitoring the advancement of technology.[24] In addition, the PCAOB has an established program to conduct post-implementation reviews of its rules and standards to evaluate the overall effect of significant rulemakings.[25]

We acknowledge the importance of monitoring the implementation of the Proposed Rules. The Commission staff works closely with the PCAOB as part of our general oversight mandate.[26] As part of that oversight, Commission staff will keep itself apprised of the PCAOB's activities for monitoring the implementation of the Proposed Rules and update the Commission, as necessary.

A. The Effective Date of the Proposed Rules

As noted above, the Proposed Rules would be effective for audits of financial statements for fiscal years ending on or after December 15, 2020. One commenter expressed concerns related to the effective date as a result of other financial reporting activities, including upcoming effective dates of certain Financial Accounting Standards Board (''FASB'') projects, other PCAOB standards, and a view that smaller audit firms may be disproportionately impacted.[27] The commenter suggested a phased implementation of the Proposed Rules. Specifically, the commenter recommended, as an example, that the Commission allow triennially inspected audit firms [28] to elect an effective date of audits for fiscal years ending on or after December 15, 2021, while also permitting earlier implementation since smaller audit firms may be disproportionally impacted.[29] The commenter further expressed the belief that a phased implementation may facilitate post-implementation reviews of the Proposed Rules.[30]

In the PCAOB Adopting Release, the Board recognized the effort required for other implementation efforts, but stated the effective date determined by the Board was designed to provide auditors with a reasonable period of time to implement the Proposed Rules, without unduly delaying the intended benefits of the Proposed Rules.[31]

We believe the Board has appropriately balanced the amount of time needed by audit firms to implement the Proposed Rules with the objectives of, and benefits obtained from, the Proposed Rules. In this regard, we note that, aside from the commenter who suggested that the Commission consider a phased implementation approach, we received no other comments from audit firms, including triennially inspected audit firms, requesting a phased implementation.

In addition, there could be practical implications of allowing for a phased implementation approach related to an auditor performance standard.[32] For example, audits of multi-national companies often involve the work of more than one auditor conducted in accordance with AS 1205, *Part of the Audit Performed by Other Independent Auditors* (''AS 1205''), wherein a principal auditor may provide instructions to the other auditors. Under a phased implementation approach, an annually inspected audit firm serving as the principal auditor may instruct a triennially inspected audit firm to follow the Proposed Rules before the triennially inspected audit firm has implemented the Proposed Rules. This approach could create challenges for the triennially inspected audit firm as it would be instructed to implement the Proposed Rules on individual engagements even though it may not have updated its methodologies or trained its professionals on the Proposed Rules, which could have a negative effect on audit quality.

Further, within the Global Networks of accounting firms,[33] many of the affiliated accounting firms outside the United States are triennially inspected audit firms. Many of these affiliated firms participate in the multi-national audits discussed above. Our understanding is that these arrangements make it more practical for the Global Network Firms to adopt the Proposed Rules simultaneously across their respective networks. As a result, the Global Network Firms may not delay implementation for the triennially inspected audit firms within their network.

Based on these considerations, we do not believe a phased implementation approach for the Proposed Rules, including providing triennially inspected audit firms with the option to delay implementation, is necessary or appropriate in the public interest or for the protection of investors.

IV. Effect on Emerging Growth Companies

In the PCAOB Adopting Release, the Board recommended that the Commission determine that the Proposed Rules apply to audits of EGCs.[34] Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act of 2012, requires that any rules of the Board ''requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis)'' shall not apply to an audit of an EGC. The provisions of the Proposed Rules do not fall into these categories.

Section 103(a)(3)(C) further provides that ''[a]ny additional rules'' adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs ''unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.''

[22] *See* Deloitte Letter and CCMC Letter.

[23] *See* CCMC Letter.

[24] *See* PCAOB Adopting Release at 5 and 60.

[25] *See* PCAOB website at *https://pcaobus.org/EconomicAndRiskAnalysis/pir/Pages/default.aspx.*

[26] *See* Section 107 of the Sarbanes-Oxley Act.

[27] *See* CCMC Letter.

[28] ''Triennially inspected audit firms'' are audit firms that, in accordance with PCAOB Rule 4003(b), are required to be inspected at least once in every three calendar years if during that time, the audit firm issued an audit report for at least one issuer but no more than 100 issuers. An audit firm is required to be inspected on an annual basis if during the prior calendar year, it issued audit reports for more than 100 issuers (''annually inspected audit firms). *See* PCAOB Rule 4003, *Frequency of Inspections, available at https://pcaobus.org/Rules/Pages/Section_4.aspx.*

[29] *See* CCMC letter.

[30] *See id.*

[31] *See* PCAOB Adopting Release at 71.

[32] The CCMC Letter references differences in considering a phased implementation approach for auditor performance standard as compared to an auditor reporting standard, which is why it did not suggest a phased implementation approach based on issuer size similar to the auditor communicating critical audit matters in accordance with AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion.*

[33] *See* PCAOB website for a listing of ''Global Networks'' and further discussion, *available at https://pcaobus.org/Registration/Firms/Pages/GlobalNetworkFirms.aspx.*

[34] *See* PCAOB Adopting Release at 69.

The Proposed Rules fall within this category. Having considered those statutory factors, we find that applying the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest.

The PCAOB provided information identified by the Board's staff from public sources, including data and analysis of EGCs that set forth its views as to why it believes the Proposed Rules should apply to audits of EGCs. To inform consideration of the application of auditing standards to audits of EGCs, the PCAOB staff published a white paper that provides general information about characteristics of EGCs (''EGC White Paper'').[35] In addition, the Board sought public input on the application of the Proposed Rules to the audits of EGCs.[36] Commenters who addressed this question generally supported applying the Proposed Rules to audits of EGCs, citing that consistent requirements should apply for similar situations encountered in any audit of a company, whether the company is an EGC or not, as well as that the benefits described in the Proposal would be applicable to EGCs.[37]

As the Board observed in the PCAOB Adopting Release, ''an analysis by the PCAOB staff . . . suggests that the prevalence and significance of the use of the work of specialists in audits of EGCs is comparable to the prevalence and significance of the use of the work of specialists in audits of non-EGCs, for audit engagements by both smaller audit firms and larger audit firms.'' [38] Additionally, the PCAOB Adopting Release noted that ''any new PCAOB standards and amendments to existing standards determined not to apply to the audits of EGCs would require auditors to address the differing requirements within their methodologies, which would also create the potential for confusion.'' [39] In the EGC White Paper, the PCAOB staff stated that ''[a]pproximately 99% of EGC filers were audited by accounting firms that also audit issuers that are not EGC filers.'' [40] As a result, there is a potential for confusion and complexity to have auditors maintain two sets of methodologies related to using work of specialists.

The Board recognized that even a small increase in audit fees could negatively affect the profitability and competitiveness of EGCs. However, the PCAOB Adopting Release notes that many EGCs are expected to experience minimal impact from the Proposed Rules. For example, for those EGCs that use a company specialist,[41] the Proposed Rules relating to the auditor's use of the work of such specialists are risk-based and designed to be scalable to companies of varying size and complexity.[42]

The PCAOB Adopting Release also noted EGCs generally tend to have shorter financial reporting histories and as a result, there is less information available to investors regarding such companies relative to the broader population of public companies.[43] As such, the Proposed Rules, which are intended to enhance audit quality, could increase the credibility of financial statement disclosures by EGCs.[44]

We agree with the Board's analysis. We believe the Proposed Rules will benefit EGCs at least as much as non-EGCs, in part, because the prevalence and significance of the use of the work of specialists in audits of EGCs is comparable to the prevalence and significance of the use of the work of specialists in audits of non-EGCs. In addition, we agree with the Board that, given the scalability and risk-based nature of the new audit requirements, EGCs likely will experience only minimal cost impacts from the Proposed Rules. Finally, we also agree with the Board the Proposed Rules could increase the credibility of financial statement disclosures by EGCs.

As such, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, we believe there is a sufficient basis to determine that applying the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules, the information submitted therewith by the PCAOB, and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB–2019–006) be and hereby are approved.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–14414 Filed 7–5–19; 8:45 am]

BILLING CODE 8011–01–P

[35] *See Characteristics of Emerging Growth Companies as of November 15, 2017* (Oct. 11, 2018), *available at https://pcaobus.org/EconomicAndRiskAnalysis/Documents/White-Paper-Characteristics-Emerging-Growth-Companies-November-2017.pdf.*

[36] *See* PCAOB Proposal; *see also* comment letters provided to the PCAOB related to this matter, *available at https://pcaobus.org/Rulemaking/Pages/docket-044-comments-auditors-use-work-specialists.aspx.*

[37] *See* PCAOB Adopting Release at 64.

[38] *See id* at 66.

[39] *See id* at 64.

[40] *See* EGC White Paper at 20.

[41] *See* PCAOB Adopting Release at 50, which discusses that the most significant impact on the final amendments related to costs for auditors is expected to result from the requirements to evaluate the work of a company's specialist.

[42] *See id* at 68.

[43] *See id* at 65.

[44] *See id* at 66.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, July 11, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 3, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–14533 Filed 7–3–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86256; File No. SR–FINRA–2019–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Establish a Corporate Bond New Issue Reference Data Service

July 1, 2019.

I. Introduction

On March 27, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a new issue reference data service for corporate bonds. The Commission published notice of filing of the proposed rule change in the **Federal Register** on April 8, 2019.[3] On May 22, 2019, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[4] The Commission has received thirteen comment letters on the proposal.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposed Rule Change

As described in more detail in the Notice, FINRA proposes to establish a new issue reference data service for corporate bonds. FINRA states that its proposal is in line with a recommendation from the SEC Fixed Income Market Structure Advisory Committee, which recommended that FINRA establish a new issue data service which would contain specified data elements on TRACE-eligible corporate bond new issues.[7]

Specifically, FINRA is proposing to amend Rule 6760 to require that underwriters subject to Rule 6760 [8] report to FINRA a number of data elements, including some already specified by the rule, for new issues in corporate debt securities.[9] FINRA proposes to require underwriters to report all these data fields prior to the first transaction in the security.

FINRA would disseminate the corporate bond new issue reference data collected under Rule 6760 upon receipt.[10] That data would be provided to subscribers for fees that FINRA states are determined on a commercially reasonable basis. In particular, FINRA proposes to make the corporate bond new issue reference data available to any person or organization for a fee of $250 per month if used for internal purposes only, and for a fee of $6,000 per month where the subscriber retransmits or repackages the data for delivery and dissemination outside the organization. FINRA notes that because the charge includes unlimited redistribution rights, FINRA would assess it only once on the party that subscribes to receive the data from FINRA. Accordingly, FINRA would not assess any charge on firms that receive the data from data vendors or other market participants that have subscribed for redistribution rights, nor would FINRA increase the amount charged to the subscriber based on how often it redistributes the data. FINRA states that it anticipates that many market participants, including clearing firms and correspondent firms, are likely to receive the data from data vendors to which they currently subscribe in lieu of developing processes to receive the data directly from FINRA.

If the Commission approves the filing, FINRA proposes to announce the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85488 (April 2, 2019), 84 FR 13977 (''Notice'').

[4] *See* Securities Exchange Act Release No. 85911, 83 FR 24839 (May 29, 2019).

The Commission designated July 7, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[5] *See* Letters from: (1) Cathy Scott, Director, Fixed Income Forum, on behalf of The Credit Roundtable, dated April 29, 2019 (''Credit Roundtable Letter''); (2) Salman Banaei, Executive Director, IHS Markit, dated April 29, 2019 (''IHS Markit Letter''); (3) David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated April 29, 2019 (''Heritage Foundation Letter''); (4) Tom Quaadman, Executive Vice President, U.S. Chamber of Commerce, dated April 29, 2019 (''Chamber Letter''); (5) Lynn Martin, President and COO, ICE Data Services, dated April 29, 2019 (''ICE Data Letter''); (6) Tyler Gellasch, Executive Director, Healthy Markets Association, dated April 29, 2019 (''Healthy Markets Letter''); (7) Greg Babyak, Global Head of Regulatory Affairs, Bloomberg L.P. dated April 29, 2019 (''Bloomberg Letter''); (8) Marshall Nicholson and Thomas S. Vales, ICE Bonds dated April 29, 2019 (''ICE Bonds Letter''); (9) Christopher B. Killian, Managing Director, SIFMA, dated April 29, 2019 (''SIFMA Letter''); (10) Larry Tabb, TABB Group, dated May 15, 2019 (''Tabb Letter''); (11) Larry Harris, Fred V. Keenan Chair in Finance, U.S.C. Marshall School of Business, dated May 17, 2019 (''Harris Letter''); (12) John Plansky, Executive Vice President and Chief Executive Officer, Charles River Development, dated May 24, 2019 (''Charles River Letter''); and (13) SEC Fixed Income Market Structure Advisory Committee, dated June 11, 2019 (''FIMSAC Letter''). All comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-finra-2019-008/srfinra2019008.htm.*

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Fixed Income Market Structure Advisory Committee Recommendation (October 29, 2018) available at: *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-corporate-bond-new-issue-reference-data-recommendation.pdf.*

[8] As part of the proposal, FINRA would amend Rule 6760(a)(1) to clarify that underwriters subject to the Rule must report required information for the purpose of providing market participants in the corporate debt security markets with reliable and timely new issue reference data to facilitate the trading and settling of these securities, in addition to the current purpose of facilitating trade reporting and dissemination in TRACE-Eligible Securities.

[9] In connection with the proposal, FINRA also would make two technical, non-substantive, clarifying edits to the definition of corporate debt security that is currently located in FINRA Rule 2232 (Customer Confirmations). First, FINRA would clarify that the definition of corporate debt security is limited to TRACE-Eligible Securities.

Second, FINRA would update the definition of corporate debt security to exclude the class of assets defined as Securitized Products in Rule 6710(m), rather than Asset-Backed Securities, defined in Rule 6710(cc).

FINRA also proposes to relocate the revised definition of corporate debt security into the TRACE Rule Series. FINRA believes it makes sense to include the definition in Rule 6710 where it would sit alongside a number of other TRACE definitions for fixed income asset types. FINRA would make corresponding technical edits to Rule 2232 to refer to the relocated definition in Rule 6710.

[10] FINRA states that under proposed Rule 6760(d), there may be some information collected under the Rule for security classification or other purposes that would not be disseminated. This may include, for example, information about ratings that is restricted by agreement. In addition, CUSIP Global Services' (''CGS'') information would not be disseminated to subscribers that do not have a valid license regarding use of CGS data.

effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following publication of the *Regulatory Notice.* The effective date will be no later than 270 days following Commission approval.

III. Summary of the Comments

Seven commenters expressly supported the proposal.[11] Several of these commenters stated that currently there is no uniform, universally available mechanism for providing market participants with consistent and timely access to reference data about corporate bonds on the day a newly issued corporate bond commences trading.[12] These commenters added that access to reference data is necessary for valuing, as well as trading and settling corporate bonds.[13] As access to this reference data is not available to all market participants prior to the beginning of trading in a new issue, commenters assert that certain market participants are currently at a competitive disadvantage.[14]

Notwithstanding their support for the proposal, several of these commenters requested that FINRA make various modifications or clarifications to its proposal. One commenter noted that the reference data ''would allow for efficient functioning of trading'' but stated that it could be challenging for underwriters to provide all of the data elements prior to the first trade and instead requested that underwriters only be required to report certain information prior to the first trade and that the remaining information should be reported within 60 minutes of the first trade.[15] Two commenters requested that FINRA clarify the meaning of the ''prior to the first transaction'' deadline for reporting reference data to FINRA.[16] Another commenter requested FINRA clarify the process for underwriters to correct erroneously reported reference data.[17] Several commenters requested FINRA provide further clarity regarding the definitions of certain data fields so as to better understand what would be required to be reported.[18] One commenter stated that while it did not disagree with FINRA's proposed data fields, FINRA should provide information to support its selections of each of the proposed data fields.[19] In addition, one commenter recommended FINRA combine certain proposed data fields as well as include six additional data fields.[20]

Four commenters asserted that FINRA did not provide sufficient justification to support the need for the creation of the new issue reference data service.[21] Three of those commenters further asserted that the proposal would diminish competition among private sector reference data providers, which could ultimately impede the quality of data available to market participants.[22] In contrast, one commenter asserted that the because of the limited set of data proposed to be captured by FINRA, the proposal would not supplant private sector market data providers.[23] Another commenter asserted that providing reference data in a manner similar to that proposed by FINRA promotes competition by reducing barriers to entry for new entrants in the reference data provider market.[24]

Five commenters asserted that in order to meet its obligations under the Act, FINRA must provide more information to justify the fees it proposed to charge subscribers of the new issue reference data service.[25] One of these commenters further stated that the data should either be available for free, or at a ''truly low cost.'' [26] Another commenter asserted that the $6,000 per month fee for redistribution could be ''a considerable additional expense'' for its members.[27]

IV. Proceedings To Determine Whether To Approve or Disapprove the FINRA Proposal

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Act [28] to determine whether the proposed rule change should be approved or disapproved. Further, pursuant to Section 19(b)(2)(B) of the Act,[29] the Commission is hereby providing notice of the grounds for disapproval under consideration. The Commission believes it is appropriate to institute proceedings at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate, however, that the Commission has reached any conclusions with respect to any of the issues involved.

In particular, the Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with: (1) Section 15A(b)(5) of the Act, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which FINRA operates or controls; [30] (2) Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest; [31] and (3) Section 15A(b)(9) of the Act, which requires that FINRA rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[32]

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 15A(b)(5), 15A(b)(6) and 15A(b)(9) of the Act, or any other provision of the Act or rule or regulation thereunder.

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[11] *See* IHS Markit Letter; ICE Data Letter; SIFMA Letter; ICE Bonds Letter; Harris Letter; Charles River Letter; FIMSAC Letter.

[12] *See* ICE Data Letter, at 1–2; ICE Bonds Letter, at 1–2; Charles River Letter, at 2; FIMSAC Letter, at 1–2.

[13] *See* ICE Data Letter, at 2; Charles River Letter, at 2; FIMSAC Letter, at 1–2.

[14] *See* ICE Data Letter, at 2; ICE Bonds Letter, at 2; FIMSAC Letter, at 2.

[15] *See* SIFMA Letter, at 1–2. *See also* Credit Roundtable Letter, at 1 (cautioning that any data provision requirements on underwriters not impede their ability to make markets in the new issue as soon as possible).

[16] *See* ICE Data Letter, at 2; ICE Bonds Letter, at 2.

[17] *See* IHS Markit Letter, at 2–3.

[18] *See* ICE Data Letter, at 2–3; SIFMA Letter, at 3; FIMSAC Letter, at 14.

[19] *See* Healthy Markets Letter, at 6.

[20] *See* FIMSAC Letter, at 7–8, 10, 12–13.

[21] *See* Heritage Foundation Letter, at 1; Chamber Letter, at 2; Healthy Markets Letter, at 4–5; Bloomberg Letter, at 9–10.

[22] *See* Heritage Foundation Letter, at 1; Chamber Letter, at 2; Bloomberg Letter, at 2–3. *See also* Tabb Letter, at 2–3.

[23] *See* FIMSAC Letter, at 3.

[24] *See* Harris Letter, at 4.

[25] *See* Chamber Letter, at 3–4; Healthy Markets Letter, at 5–6; SIFMA Letter, at 3–4; Bloomberg Letter, at 6–9; Harris Letter, at 7.

[26] *See* Harris Letter, at 7.

[27] *See* Credit Roundtable Letter, at 1.

[28] 15 U.S.C. 78s(b)(2).

[29] 15U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the self-regulatory organization consents to the longer period. *See id.*

[30] 15 U.S.C. 78*o*–3(b)(5).

[31] 15 U.S.C. 78*o*–3(b)(6).

[32] 15 U.S.C. 78*o*–3(b)(9).

Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[33]

Such comments should be submitted by July 29, 2019. Rebuttal comments should be submitted by August 12, 2019.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–008. The file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2019–008 and should be submitted on or before July 29, 2019. Rebuttal comments should be submitted by August 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–14401 Filed 7–5–19; 8:45 am]

BILLING CODE 8011–01–P

[33] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[34] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86255; File No. SR–DTC–2019–004]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Reorganizations Service Guide

July 1, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2019, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by DTC would revise the Reorganizations Service Guide (''Guide'')[5] to postpone the date for the retirement of the RIPS (Reorganization Inquiry for Participants) function on the Participant Terminal System (''PTS'') and Participant Browser Service (''PBS''),[6] as more fully described below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (''DTC Rules'') and in the Guide, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Guide to postpone the date for the retirement of the RIPS function on PTS and PBS, as more fully described below.

Background

On May 21, 2019, DTC filed with the Commission a proposed rule change to, among other things, update its corporate action service by transitioning corporate action functions on PTS and PBS for the processing of reorganizations (''Reorganizations'')[7] to its Corporate Action Web (''CA Web'')[8] system.[9] The

[6] PTS and PBS are user interfaces for DTC's Settlement and Asset Services functions. PTS is mainframe-based and PBS is web-based with a mainframe back-end. Participants may use either PTS or PBS, as they are functionally equivalent. References to a particular PTS function in this rule filing include the corresponding PBS function.

[7] DTC offers an array of services for processing corporate action events. The services fall into three categories: (i) Distributions, such as cash and stock dividends, principal and interest, and capital gain distributions; (ii) redemptions, such as full and partial calls, final paydowns, and maturities; and (iii) Reorganizations, which include both mandatory and voluntary reorganizations such as exchange offers, conversions, Dutch auctions, mergers, puts, reverse stock splits, tender offers, and warrant exercises.

[8] In PTS/PBS, corporate actions are announced using DTC proprietary codes to signify event types. CA Web replaces DTC's proprietary codes with market standard language. For example, a cash dividend payment that PTS/PBS identifies as a ''08'' function code is identified in CA Web as a ''Cash Dividend'' event. Additionally, CA Web incorporates the entire lifecycle of an event into one platform with a unique corporate action identifier that follows the event through its lifecycle. CA Web gives Participants the ability to customize screen displays and offers flexible methods for event search, neither of which is available in the PTS/PBS systems.

[9] *See* Securities Exchange Act Release No. 85986 (May 31, 2019), 84 FR 26466 (June 6, 2019) (SR–DTC–2019–003).

rule change provided that, at the conclusion of the pilot test phase in Q2 of 2019, Reorganizations activity within the ADJI (Adjustment Inquiries), RIPS, and SDAR Dept. C [10] (Same Day Allocation Reporting) functions [11] will be retired from PTS/PBS and the functionality will only be available on CA Web. DTC has been communicating this change to Participants through CA Web review sessions, Important Notices, and industry outreach.[12]

Proposed Rule Change

Subsequent to the May 21, 2019 rule filing, DTC began to receive feedback from Participants indicating that they need additional time to test the parallel RIPS functionality on CA Web, the ''Reorganizations Announcements'' function, before the retirement of the RIPS function on PTS/PBS.

In response to this feedback, with this proposed rule change, DTC would postpone the date for the retirement of the RIPS function on PTS/PBS. DTC will continue the pilot test phase in which the RIPS function would continue to be available on PTS/PBS, and its parallel Reorganizations Announcements function would continue to be available on CA Web. A new date for the retirement of the RIPS function from PTS/PBS would be announced, subject to a future proposed rule change and Important Notice issued by DTC. The proposed rule change would not impact the retirement of PTS/PBS function ADJI and SDAR Dept. C.

Pursuant to the proposed rule change, DTC would amend the Guide to reflect the postponement of the RIPS function from PTS/PBS.

2. Statutory Basis

DTC believes that this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that this proposal is consistent with Section 17A(b)(3)(F) of the Act,[13] for the reasons described below.

Section 17(A)(b)(3)(F) of the Act, requires, *inter alia,* that DTC Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[14] The proposed rule change would postpone the date for the retirement of the RIPS function from PTS/PBS until further notice. By affording Participants additional time to test the Reorganizations Announcements function on CA Web prior to the retirement of RIPS, the proposed rule change would provide Participants the opportunity to minimize potential business interruption in their processing of reorganization events when the RIPS function is retired. Therefore, by providing Participants with the opportunity to minimize potential business disruption in this manner, DTC believes that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions related to Reorganizations, consistent with Section 17A(b)(3)(F) of the Act.[15]

(B) Clearing Agency's Statement on Burden on Competition

DTC believes that the proposed rule change with respect to postponing the date for the retirement of the RIPS function from PTS/PBS may impact competition by potentially reducing business interruption in Participants' processing of reorganization events.[16] The proposed rule change would afford Participants additional time to test the Reorganizations Announcements function on CA Web prior to the retirement of RIPS, thereby providing Participants the opportunity to minimize potential business interruption in their processing of reorganization events when the RIPS function is retired. Therefore, DTC believes that the proposed rule change with respect to postponing the date for the retirement of the RIPS function from PTS/PBS would not impose a burden on competition, but may promote competition.[17]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 thereunder.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2019–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2019–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

[10] The initial rule filing on May 21, 2019 inadvertently referred to this function as SDAR Dept ''R'', a related element of the SDAR function that had already been retired. The Guide and Participant outreach refer to the correct element of the function, SDAR Dept ''C''.

[11] *See* PTS/PBS Function Guides, *available at http://www.dtcc.com/settlement-and-asset-services/edl-ptspbs-function-guides.*

[12] *See* Important Notice B10792–19 (March 14, 2019); Important Notice B8760–18 (June 7, 2018), Important Notice B9072–18 (July 9, 2018) and Important Notice B9122–18 (July 26, 2018), *available at http://www.dtcc.com/legal/important-notices;* and DTC Corporate Actions Product Update to SIFMA (October 11, 2018), *available at https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-CAS_DTCC-Corporate-Actions-Update_2018.pdf.*

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] *Id.*

[15] *Id.*

[16] 15 U.S.C. 78q–1(b)(3)(I).

[17] *Id.*

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://www.dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2019–004 and should be submitted on or before July 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–14400 Filed 7–5–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 471]

Re-Delegation of Authority To Invoke the Law Enforcement Privilege Information Relating To Vetting of Certain Refugee Applicants

By virtue of the authority delegated to the Under Secretary of State for Management by the laws of the United States, as delegated by Department of State Delegation of Authority No. 462, I hereby re-delegate to the Director of Admissions for the Bureau of Population, Refugees, and Migration, to the extent authorized by law, the authority to invoke the law enforcement privilege with respect to information relating to security vetting of refugee applicants to the U.S. Refugee Admissions Program.

This re-delegation of authority does not revoke or otherwise affect any other delegation of authority currently in effect. The authority re-delegated herein may also be exercised, to the extent authorized by law, by the Secretary, the Deputy Secretary, the Under Secretary and Deputy Under Secretary for Management, the Under Secretary for Civilian Security, Democracy, and Human Rights, and the Assistant Secretary for Population, Refugees, and Migration.

This re-delegation is effective upon signature and will be published in the **Federal Register**.

Dated: June 7, 2019.

Brian J. Bulatao,

Under Secretary of State for Management, Department of State.

[FR Doc. 2019–14454 Filed 7–5–19; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice: 10817]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Verrocchio: Sculptor and Painter of Renaissance Florence" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Verrocchio: Sculptor and Painter of Renaissance Florence,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, District of Columbia, from on or about September 15, 2019, until on or about January 12, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–28 of June 10, 2019.

Rick A. Ruth,

Senior Advisor, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–14421 Filed 7–5–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 473]

Delegation of Authority Approval of Construction Security Certifications to Congress

By virtue of the authority vested in the Secretary of State by the laws of the United States, including 22 U.S.C. 2651a; the Diplomatic Security Act, codified in 22 U.S.C. 4801, *et seq.;* and the Foreign Affairs Authorization Act, 1988 and 1989 (Pub. L. 100–204) (the Act), as amended, I hereby delegate to the Under Secretary for Management, to the extent authorized by law, the authority to approve submission to Congress of the certifications required by section 160(a) of the Act.

The authority delegated herein may also be exercised by the Deputy Under Secretary for Management, to the extent authorized by law; and by the Secretary and Deputy Secretary.

This delegation does not repeal or amend any other delegation currently in effect. Any act, authority, or procedure subject to, or affected by, this delegation shall be deemed to be such act, authority, or procedure as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: June 19, 2019.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2019–14455 Filed 7–5–19; 8:45 am]

BILLING CODE 4710–43–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 33 (Sub-No. 339X)]

Union Pacific Railroad Company—Abandonment Exemption—In Harris and Chambers Counties, Tex.

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon a 2.23-mile portion of the U.S. Steel Industrial Lead between milepost 2.4 in Baytown and milepost 4.63 at the east side of Cedar Bayou, in Harris and Chambers Counties, Tex. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 77520 and 77523.

UP has certified that: (1) No local or overhead traffic has moved over the Line for at least two years; (2) there is

[20] 17 CFR 200.30–3(a)(12).

[1] UP previously obtained authority to abandon the Line, but did not file a notice of consummation within the time period prescribed by 49 CFR 1152.29(e)(2). *See Union Pac. R.R.—Aban. Exemption—In Harris & Chambers Ctys., Tex.,* AB 33 (Sub-No. 324X) (STB served Mar. 29, 2017).

no need to reroute any traffic over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1152.50(d)(1) (notice to governmental agencies), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.7 and 1105.8 (environment and historic report) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will become effective on August 7, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 18, 2019. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 29, 2019, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Jeremy Berman, General Attorney, 1400 Douglas St. #1580, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void ab initio.

UP has filed a combined environmental and historic report that addresses the potential effects of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by July 12, 2019. The EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by UP's filing of a notice of consummation by July 8, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: July 1, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowry,

Clearance Clerk.

[FR Doc. 2019–14347 Filed 7–5–19; 8:45 am]

BILLING CODE 4915–01–P

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Finding of No Significant Impact/Record of Decision and Adoption of the United States Marine Corps Supplemental Environmental Analysis for the Establishment of the Playas Temporary Military Operating Area

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability of Finding of No Significant Impact/Record of Decision.

SUMMARY: The Federal Aviation Administration (FAA) announces its decision to adopt the United States Marine Corps (USMC) Supplemental Environmental Analysis for Temporary Activation of Playas Military Operations Area (SEA) for the establishment of a Temporary Military Operating Area (TMOA) in Playas, New Mexico. This notice announces that based on its independent review and evaluation of the SEA and supporting documents, the FAA is adopting the SEA and issuing a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the establishment of the Playas TMOA.

FOR FURTHER INFORMATION CONTACT: Paula Miller, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–7378.

SUPPLEMENTARY INFORMATION:

Background

The USMC has established the Tactical Recovery of Air Craft and Personnel (TRAP), Training and Readiness Certification Exercise (CERTEX) as a mission essential task performed by assigned and briefed aircrews for the specific purpose of recovery of personnel, equipment and/or aircraft in a tactical situation when survivors and the location have been confirmed. Commonly known as a simulated rescue of a downed pilot, the TRAP CERTEX requires use of aircraft and ground forces in a closely coordinated set of actions to execute the rescue of personnel on the ground. A TMOA is required for military aircraft that support the exercise.

Implementation

After evaluating the aeronautical study and the SEA, the FAA has issued a FONSI/ROD to establish the Playas TMOA for a period not to exceed one day during a six-day window from August 26–31, 2019. The Playas TMOA will be activated by publishing a Notice to Airman (NOTAM) two cycles (56 days) prior to the exercise in the Notices to Airman Publication and by publishing a NOTAM at least four hours in advance.

In accordance with Section 102 of the National Environmental Policy Act of 1969 (''NEPA''), the Council on Environmental Quality's (''CEQ'') regulations implementing NEPA (40 CFR parts 1500–1508), and other applicable authorities, including the FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–2, and FAA Order JO 7400.2M, ''Procedures for Handling Airspace Matters,'' paragraph 32–2–3, the FAA has conducted an independent

review and evaluation of the USMC's SEA, dated July 2018, and its supporting documents. As a cooperating agency with responsibility for approving special use airspace (SUA) under 49 U.S.C. 40103(b)(3)(A), the FAA provided subject matter expertise and coordinated with the USMC during the environmental review process.

FAA circularized the proposed action from February 23, 2019 through April 1, 2019 in the areas required by JO 7400.2M, which resulted in zero public comments. The FONSI/ROD and SEA are available upon request by contacting Paula Miller at: Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–7378.

Issued in Des Moines, WA, on June 24, 2019.

Shawn Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–14471 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2019–0097]

Privacy Act of 1974; Department of Transportation, Federal Aviation Administration; DOT/FAA 854, Small Unmanned Aircraft Systems (sUAS) Waivers and Authorizations

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of a modified System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Department of Transportation proposes to rename, update, and reissue a Department of Transportation (DOT) system of records titled, ''Department of Transportation Federal Aviation Administration; DOT/FAA 854, Requests for Waivers and Authorizations Under 14 CFR part 107.'' This system of records allows the Federal Aviation Administration (FAA) to collect and maintain records on individuals operating small unmanned aircraft systems (hereinafter ''sUAS'') who request and receive authorizations to fly their sUAS in controlled airspace, or waivers to fly their sUAS outside of the requirements of the Code of Federal Regulations. This updated system, *Small Unmanned Aircraft Systems (sUAS) Waivers and Authorizations,* will be included in the Department of Transportation's inventory of record systems.

DATES: Written comments should be submitted on or before August 7, 2019. The Department may publish an amended Systems of Records Notice in light of any comments received. This new system will be effective immediately and the modified routine use effective August 7, 2019.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2019–0097 by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251. Instructions: You must include the agency name and docket number DOT–OST–2019–0097. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.* Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202.366.8135.

SUPPLEMENTARY INFORMATION: Under current law, persons flying sUAS under the provisions of 14 CFR part 107 or flying sUAS in limited recreational operations pursuant to 49 U.S.C. 44809(a) may not operate sUAS in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless the person has received authorization to operate from the FAA. sUAS operators under part 107, who are also referred to as remote pilots in command, may request waivers of operational rules applicable to sUAS requirements maintaining visual line of sight and yielding right of way to manned aircraft, as well as prohibitions on operations over people and in certain airspace pursuant to part 107.

The FAA is revising SORN 854 because in 2018, Congress passed the FAA Reauthorization Act of 2018, which enacted 49 U.S.C. 44809(a) requiring authorizations for limited recreational operators flying sUAS in controlled airspace. Before the enactment of § 44809(a), SORN 854 covered only sUAS operators who operated under 14 CFR part 107. At that time, only Part 107 operators could submit requests for authorization, as limited recreational operators as defined under previous law were not required to receive authorizations before flying in controlled airspace. Now, both types of operators (Part 107 and § 44809(a)) are required to request and receive such authorizations.

Additionally, the FAA is updating the SORN to account for two new systems through which sUAS operators can request for waivers and/or authorizations. The first is a new web-based system, which has replaced previous paper forms. Using this web-based system, sUAS operators who determine to seek a waiver or an authorization may request such by electronically completing a form on the FAA website. After reviewing the information the applicant provides, the FAA will determine whether it can assure safety in the national airspace when granting the waiver or authorization; often, such grants will include provisions to which the requester must adhere, to mitigate the risk associated with the waiver or authorization.

Operators may now also request authorizations through third parties qualified to offer services by the FAA under the Low Altitude Authorization and Notification Capability (hereinafter ''LAANC''). These third parties, called UAS Service Suppliers (hereinafter ''USS''), enter into agreements with the FAA to automate and expedite the process by which sUAS operators receive authorization to fly in the aforementioned airspace from the FAA. The USS develop applications that enable operators to submit requests for authorization to the FAA where the requests are evaluated against pre-

determined criteria contained in LAANC. This enables operators to obtain authorizations quickly and efficiently to operate in Class B, C, D, and lateral boundaries of surface area E airspace designated for an airport. The number of USS available to the public and the locations where LAANC is available is updated on the FAA website.

The following sections of this system of records notice have been updated: System name; authority; purpose; categories of records; record source; routine uses; storage; retention and disposal; and safeguards.

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Aviation Administration (FAA) proposes to rename, update, and reissue a DOT system of records titled, ''DOT/FAA 854 Requests for Waivers and Authorizations Under 14 CFR part 107.'' This update results from the recently-passed FAA Reauthorization Act of 2018, which enacts 49 U.S.C. 44809(a). Specifically, sUAS operators who meet the requirements established in § 44809(a) are now required to request and receive authorization from the FAA before flying their sUAS in controlled airspace. Prior to this legislation, only sUAS operators who operated in accordance with FAA regulations at 14 CFR part 107 were required to request and receive these authorizations. Accordingly, the previous iteration of this SORN applied only to individuals operating their sUAS in accordance with Part 107. This update expands the SORN's scope to cover individuals operating their sUAS in accordance with 49 U.S.C. 44809(a). Additionally, the SORN is updated to reflect new automated methods for requesting and receiving waivers and authorizations.

Specifically, this update includes changes to the following sections: System name; authority; purpose; categories of records; record source; routine uses; storage; retention and disposal; and safeguards.

- The scope of this system of records has expanded to include records on sUAS operators who operate § 44809(a); accordingly, we are proposing to update the notice's name to ''Small Unmanned Aircraft Systems (sUAS) Waivers and Authorizations.''
- The authorities section has likewise been updated to include 49 U.S.C. 44809(a) to reflect the new legal authority requiring limited recreational operators to request authorizations.
- The purpose section has also been updated to encompass individuals operating their sUAS in accordance with § 44809(a); however, the purpose for collecting information for all categories of individuals otherwise remains the same.
- The records category section has been updated to reflect additional categories of information collected by the automated system for processing authorizations. Specifically, the following additional information will be collected by this automated system: Specification of proposed sUAS operations; sUAS flight plan information (including geometry); airspace class(es); submission reference codes; and safety justifications for non-auto-authorized operations.
- The records source section has been updated to reflect that records are obtained on behalf of individuals from the USS, to include new automated methods for requesting and receiving authorizations.
- The routine use section has been updated. Specifically, a system-specific routine use allowing the sharing of information to law enforcement has been eliminated, as the FAA determined that it is duplicative of a departmental routine use. Further, a system-specific routine use has been added to allow the FAA to share waiver and authorization information with the NTSB in connection with its investigative responsibilities. These two changes to the routine use section are further addressed below in section 1.B.
- Finally, OMB Circular A–108 recommends that agencies include all routine uses in one notice rather than incorporating general routine uses by reference; therefore, FAA is replacing the routine use that referenced the ''Statement of General Routine Uses'' with all of the general routine uses that apply to this system. This is merely a technical change and does not substantially affect any of the routine uses for records of this system.
- The storage, retention and disposal, and safeguard sections has been updated remove the reference to 14 CFR part 107, therefore reflecting the expansion in scope of the system of records to incorporate records on sUAS operators who request waiver under 14 CFR part 107 and those who request authorizations under both 14 CFR part 107 and 49 U.S.C. 44809(a). Previously, these sections referred only to 14 CFR part 107.
- Additionally, this notice includes non-substantive changes to simplify and clarify the language, formatting, and text of the previously published notice to align with the requirements of Office of Management and Budget Memoranda A–108, and for consistency with other departmental system of records notices.

A. Description of Records

The FAA's regulations at 14 CFR part 107 governing operation of sUAS permits operators to apply for certificates of waiver to allow a sUAS operation to deviate from certain provisions of 14 CFR part 107 if the FAA Administrator finds the operator can safely conduct the proposed operation under the terms of a certificate of waiver. Operators flying under 14 CFR part 107 or flying limited recreational operations under 49 U.S.C. 44809(a) may request authorizations to enter controlled airspace (Class B, Class C, or Class D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport). The FAA assesses requests for waivers on a case-specific basis that considers the proposed sUAS operation, the unique operating environment, and the safety mitigations provided by that operating environment. Accordingly, this SORN covers documents relevant to both waivers of certain provisions of part 107 as well as authorizations to fly in controlled airspace.

1. Waivers

To obtain a certificate of waiver, an applicant must submit a request containing a complete description of the proposed operation and a justification, including supporting data and documentation as necessary, to establish the proposed operation can safely be conducted under the terms of the requested certificate of waiver. The FAA expects that the time and effort the operator will put into the analysis and data collection for the waiver application will be proportional to the specific relief requested. Similarly, the FAA anticipates that the time required for it to make a determination regarding waiver requests will vary based on the complexity of the request. For example, a request for a major deviation from part 107 for an operation that takes place in a congested metropolitan area with heavy air traffic will likely require significantly more data and analysis than a request for a minor deviation for an operation that takes place in a sparsely populated area with minimal air traffic. If a certificate of waiver is granted, that certificate may include additional conditions and limitations designed to ensure that the sUAS operation can be conducted safely. The certificate-of-waiver process will allow the FAA to assess case-specific information concerning a sUAS operation that takes place in a unique operating environment and consider

allowing additional operating flexibility that recognizes safety mitigations provided by the specific operating environment. The FAA anticipates that this process will also serve as a bridging mechanism for new and emerging technologies; allowing the FAA to permit testing and use of those technologies, as appropriate, before the pertinent future rulemaking is complete.

Information collected relevant to waivers include: Name of person requesting the waiver, contact information for person applying for the waiver (telephone number, mailing address, and email address); Remote pilot in command name; remote pilot in command's airmen certification number and rating; remote pilot in command contact information; aircraft registration number; aircraft manufacturer name and model; submission reference code; regulations subject to waiver; requested date and time operations will commence and conclude under the waiver; flight path information, including but not limited to altitude and coordinates; safety justification; description of proposed operations.

2. Airspace Authorizations

For airspace authorization requests to operate a sUAS in Class B, Class C, Class D or within the lateral boundaries of the surface area of Class E airspace designated for an airport, a remote pilot in command may seek either automatic approval or a request for further coordination from the FAA. Automatic approvals are completed by checking against pre-determined FAA-approved altitude values and locations within the aforementioned airspace. Requests sent through the FAA website are manually checked against the pre-determined values to either approve or deny the request. As this method requires manual approval and is not scalable to the numbers of requests for authorization, time for the sUAS operator to receive a response is variable and can take up to 90 days or more. Requests sent through LAANC are done through an automated process and operators receive near real time notice of either an approval or denial of the authorization request. Requests for further coordination are those authorization requests for operations that are within the aforementioned airspace and under 400 feet of altitude, but otherwise are a location and altitude that has not been pre-determined by the FAA to be safe without further consideration. These requests for further coordination are sent via either the FAA website or through LAANC and routed to the local Air Traffic Control facility where the requested operation would take place to make an approval (or denial) decision. The appropriate ATC facility has the best understanding of local airspace, its usage, and traffic patterns and is in the best position to ascertain whether the proposed sUAS operation would pose a hazard to other users or the efficiency of the airspace, and procedures to implement to mitigate such hazards. The ATC facility has the authority to approve or deny aircraft operations based on traffic density, controller workload, communications issues, or any other type of operational issues that could potentially impact the safe and efficient flow of air traffic in that airspace. If necessary to approve a sUAS operation, ATC may require mitigations such as altitude constraints and direct communication. ATC may deny requests that pose an unacceptable risk to the national airspace system (NAS) and cannot be mitigated.

Information collected relevant to airspace authorizations requested using the non-automated method include: Aircraft operator name; aircraft owner name; name of person requesting the authorization; contact information for the person applying for the authorization; remote pilot in command name; remote pilot in command contact information; remote pilot in command certificate number; aircraft manufacturer name and model; aircraft registration number; requested date and time operations will commence and conclude; requested altitude applicable to the authorization; and description of proposed operations.

Information collected relevant to airspace authorizations requested using the automated method (LAANC) include: Name of pilot in command; contact telephone number of remote pilot in command; start date, time, and duration of operation; maximum altitude; geometry; airspace class(es); submission reference code; safety justification for non-auto-authorized operation; and aircraft registration number.

B. System of Records

As described below in the Routine Uses section of this notice, the FAA will make the following information available to the public on an FAA website: Waiver applications and decisions, including any history of previous, pending, existing, or denied requests for waivers applicable to the sUAS at issue for purposes of the waiver, and special provisions applicable to the sUAS operation that is the subject of the request. Such availability is compatible with the purposes of this system because this system is intended, in part, to educate sUAS operators who seek to apply for a waiver, as operators will be able to review prior grants of waivers and the accompanying special provisions in their efforts to replicate successful waiver applications. The FAA does not plan to post records relevant to airspace authorizations on its website because airspace authorizations are unique to each operation. Each airspace authorization is specific to the location and time of the planned operation; therefore, posting of airspace authorizations would not prove advantageous to prospective applicants.

Finally, this system of records notice has been updated to include a new routine use to allow disclosure of records to the National Transportation Safety Board (NTSB) in connection with its investigative responsibilities. Such disclosure is compatible with the purposes of this system because this system is intended, in part, to provide for safety of the NAS. The NTSB may require these records in the event that an sUAS is involved in an aircraft accident requiring NTSB investigation. Disclosure of these records to NTSB for this purpose ensures NTSB's ability to fully investigate such accidents and therefore maintain safety of the NAS.

II. Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

System Name and Number

DOT/FAA—854 Small Unmanned Aircraft Systems (sUAS) Waivers and Authorizations.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

For waivers, the system will be located in the Commercial Operations Branch, Flight Standards Service (AFS–820), Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20024. For airspace authorizations, the system will be located in the Emerging Technologies Team (AJV–115), Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20024.

SYSTEM MANAGER(S) AND ADDRESS:

For waivers: Manager, Commercial Operations Branch, Flight Standards Service (AFS–820), Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20024. For airspace authorizations: Manager, UAS Tactical Operations Section, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 106(g), Duties and powers of Administrator; 49 U.S.C. 40101, Policy; 49 U.S.C. 40103, Sovereignty and use of airspace; 49 U.S.C. 40106, Emergency powers; 49 U.S.C. 40113, Administrative; 49 U.S.C. 44701, General requirements; FAA Modernization and Reform Act of 2012, Public Law 112–95 (''FMRA'') § 333, Special Rules for Certain Unmanned Aircraft Systems; 14 CFR part 107, subpart D, ''Waivers''; 14 CFR 107.41, ''Operation in certain airspace''; and 49 U.S.C. 44809(a).

PURPOSE(S):

The purpose of this system is to receive, evaluate, and respond to requests for authorization to operate a sUAS in Class B, C, or D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, and evaluate requests for a certificate of waiver to deviate safely from one or more sUAS operational requirements specified in 14 CFR part 107. The FAA also will use this system to support FAA safety programs and agency management, including safety studies and assessments. The FAA may use contact information provided with requests for waiver or authorization to provide sUAS owners and operators' information about potential unsafe conditions and educate sUAS owners and operators regarding safety requirements for operation. The FAA also will use this system to maintain oversight of FAA issued waiver or authorizations and records from this system may be used by FAA for enforcement purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aircraft operators, aircraft owners, persons requesting a waiver or authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aircraft operator name; Aircraft owner name; Name of person requesting a waiver or authorization; Contact information for person applying for waiver or authorization: Mailing address, telephone number, and email address of person submitting application for waiver or authorization; Responses to inquiries concerning the applicant's previous and current waivers; Remote pilot in command name; Airmen Certification Number (in those individuals certificated under another program prior to 2013 and have not requested a change of certificate number the airmen certificate number may be the individual's Social Security Number); Contact information for remote pilot in command: Address and telephone number; Remote pilot in command certificate number; Aircraft manufacturer name and model; Aircraft registration number; Regulations subject to waiver or authorization; Requested date and time operations will commence and conclude under waiver or authorization; Flight path information, including but not limited to the requested altitude and coordinates of the applicable to the waiver or authorization; Description of proposed operations; specifications; Geometry (center point with radius or Geo/JSON polygon); airspace class(s); Submission reference code; Safety justification for non-auto-authorized operations.

RECORD SOURCE CATEGORIES:

Records are obtained from individuals, manufacturers of aircraft, maintenance inspectors, mechanics, and FAA officials. Records are also obtained on behalf of individuals through UAS Service Suppliers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to other disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

SYSTEM SPECIFIC ROUTINE USES:

1. To the public, waiver applications and decisions, including any history of previous, pending, existing, or denied requests for waivers applicable to the sUAS at issue for purposes of the waiver, and special provisions applicable to the sUAS operation that is the subject of the request. Email addresses and telephone numbers will not be disclosed pursuant to this Routine Use. Airspace authorizations the FAA issues also will not be disclosed pursuant to this Routine Use, except to the extent that an airspace authorization is listed or summarized in the terms of a waiver.

2. To law enforcement, when necessary and relevant to a FAA enforcement activity.

3. Disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.

DEPARTMENTAL ROUTINE USES:

4. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

5. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

6. A record from this system of records may be disclosed, as a routine use, to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her official capacity, or (c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected. 6b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her official capacity, or (c) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. The information contained in this system of records will be disclosed to the Office of Management and Budget, OMB in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

9. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

10. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress and the public, published by the Director, OMB, dated September 20, 1989.

11. DOT may disclose records from this system, as a routine use to appropriate agencies, entities and persons when (1) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or another agency or entity) that rely upon the, compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

12. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

13. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

14. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1), of the Privacy Act.

15. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment, November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004, (Pub. L. 108–458) and Executive Order, 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Individual records relevant to both waivers and airspace authorizations are maintained in an electronic database system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records of applications for waivers and authorizations in the electronic database system may be retrieved by sUAS registration number, the manufacturer's name and model, the name of the current registered owner and/or organization, the name of the remote pilot in command, the airmen certification number, the name of the applicant and/or organization that submitted the request for waiver or authorization, the special provisions (if any) to which the FAA and the applicant agreed for purposes of the waiver or authorization, and the location and altitude, class of airspace

and area of operations that is the subject of the request. Records may also be sorted by regulation section that is the subject of the request for waiver or authorization.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The FAA will retain records in this system of records, which covers both waivers and airspace authorizations, as permanent government records until it receives record disposition authority from the National Archives and Records Administration (NARA), pursuant to 36 CFR 1225.16 and 1225.18. The FAA has requested from NARA authority to dispose of waiver and authorization records after two years following the expiration of the waiver or authorization.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system for waivers and airspace authorizations are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Manager at the address provided in the section ''System manager.'' When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORDS PROCEDURE:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURE:

See ''Records Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

A full notice of this system of records, DOT/FAA854 Requests for Waivers and Authorizations under 14 CFR part 107 was published in the **Federal Register** on August 2, 2016, (81 FR 50789).

Issued in Washington, DC, on July 2, 2019.

Stephen H. Holden,

Associate CIO for IT Policy and Oversight, Department of Transportation.

[FR Doc. 2019–14449 Filed 7–5–19; 8:45 am]

BILLING CODE 4910–9X–P

UNITED STATES SENTENCING COMMISSION

Requests for Applications; Practitioners Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: In view of upcoming vacancies in the voting membership of the Practitioners Advisory Group, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to one of the vacancies to apply. The voting memberships covered by this notice are two circuit memberships (for the Second Circuit and the District of Columbia Circuit) and one at-large membership. An applicant for voting membership of the Practitioners Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the addresses section below. Application materials should be received by the Commission not later than September 6, 2019.

DATES: Application materials for voting membership of the Practitioners Advisory Group should be received not later than September 6, 2019.

ADDRESSES: An applicant for voting membership of the Practitioners Advisory Group should apply by sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov*. The regular mail address is United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov*. More information about the Practitioners Advisory Group is available on the Commission's website at *www.ussc.gov/advisory-groups*.

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice (*i.e.,* the circuit memberships for the Second Circuit and the District of Columbia Circuit, and one at-large membership) to apply by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. 994(a), (o), (p), § 995, § 996(a); USSC Rules of Practice and Procedure 2.2(c), 5.4.

Kenneth P. Cohen,

Staff Director.

[FR Doc. 2019–14392 Filed 7–5–19; 8:45 am]

BILLING CODE 2210–40–P

FEDERAL REGISTER

Vol. 84 Monday,
No. 130 July 8, 2019

Part II

Environmental Protection Agency

40 CFR Part 60
Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2017–0355: FRL–9995–70–OAR]

RIN 2060–AT67

Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing three separate and distinct rulemakings. First, the EPA is repealing the Clean Power Plan (CPP) because the Agency has determined that the CPP exceeded the EPA's statutory authority under the Clean Air Act (CAA). Second, the EPA is finalizing the Affordable Clean Energy rule (ACE), consisting of Emission Guidelines for Greenhouse Gas (GHG) Emissions from Existing Electric Utility Generating Units (EGUs) under CAA section 111(d), that will inform states on the development, submittal, and implementation of state plans to establish performance standards for GHG emissions from certain fossil fuel-fired EGUs. In ACE, the Agency is finalizing its determination that heat rate improvement (HRI) is the best system of emission reduction (BSER) for reducing GHG—specifically carbon dioxide (CO_2)—emissions from existing coal-fired EGUs. Third, the EPA is finalizing new regulations for the EPA and state implementation of ACE and any future emission guidelines issued under CAA section 111(d).

DATES: Effective September 6, 2019.

ADDRESSES: The EPA has established a docket for these actions under Docket ID No. EPA–HQ–OAR–2017–0355. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA's Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about these final actions, contact Mr. Nicholas Swanson, Sector Policies and Programs Division (Mail Code D205–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4080; fax number: (919) 541–4991; and email address: *swanson.nicholas@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. The EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms:

ACE Affordable Clean Energy Rule
AEO Annual Energy Outlook
ANPRM Advance Notice of Proposed Rulemaking
BACT Best Available Control Technology
BSER Best System of Emission Reduction
Btu British Thermal Unit
CAA Clean Air Act
CCS Carbon Capture and Storage (or Sequestration)
CFR Code of Federal Regulation
CO_2 Carbon Dioxide
CPP Clean Power Plan
EGU Electric Utility Generating Unit
EIA Energy Information Administration
EPA Environmental Protection Agency
FIP Federal Implementation Plan
GHG Greenhouse Gas
HRI Heat Rate Improvement
IGCC Integrated Gasification Combined Cycle
kW Kilowatt
kWh Kilowatt-hour
MW Megawatt
MWh Megawatt-hour
NAAQS National Ambient Air Quality Standards
NGCC Natural Gas Combined Cycle
NO_X Nitrogen Oxides
NSPS New Source Performance Standards
NSR New Source Review
OMB Office of Management and Budget
$PM_{2.5}$ Fine Particulate Matter
PRA Paperwork Reduction Act
PSD Prevention of Significant Deterioration
RIA Regulatory Impact Analysis
RTC Response to Comments
SIP State Implementation Plan
SO_2 Sulfur Dioxide
UMRA Unfunded Mandates Reform Act
U.S. United States
VFD Variable Frequency Drive

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Executive Summary

With this document, the EPA is, after review and consideration of public comments, finalizing three separate and distinct rulemakings. First, the EPA is finalizing the repeal of the CPP which was proposed at 82 FR 48035 (Oct. 16, 2017) (''Proposed Repeal''). Second, the EPA is promulgating ACE, which consists of emission guidelines for states to develop and submit to the EPA plans that establish standards of performance for CO_2 emissions from certain existing coal-fired EGUs within their jurisdictions. Third, the EPA is finalizing implementing regulations that provide direction to both the EPA and states on the implementation of ACE and any future emission guidelines issued under CAA section 111(d). This document does not include any final action concerning the New Source Review (NSR) reforms the EPA proposed in conjunction with the ACE proposal; the EPA intends to take final action on the proposed NSR reforms in a separate final action at a later date.

First, the EPA is repealing the CPP. In proposing to repeal the CPP, the Agency proposed a change in the legal interpretation of CAA section 111, on which the CPP was based, to an interpretation of the CAA that ''is consistent with the CAA's text, context, structure, purpose, and legislative history, as well as with the Agency's historical understanding and exercise of its statutory authority.'' [1] After further review of the EPA's statutory authority under CAA section 111 and in consideration of public comments, the Agency is finalizing the repeal of the CPP. The discussion of the repeal action, along with the EPA's explanation that it intends the repeal of the CPP to be independent from the other final actions in this document, can be found in section II below.

Second, the EPA is finalizing ACE, which consists of emission guidelines to inform states in the development, submittal, and implementation of state plans that establish standards of performance for CO_2 from certain existing coal-fired EGUs within their jurisdictions. In these emission guidelines, the EPA has determined that the BSER for existing EGUs is based on HRI measures that can be applied to a designated facility. ACE also clarifies the roles of the EPA and the states under CAA section 111(d). With the promulgation of this action, it is the states' responsibility to use the information and direction herein to develop standards of performance that reflect the application of the BSER. Per the CAA, states may also consider source-specific factors—including, among other factors, the remaining useful life of an existing source—in applying a standard of performance to that source. In this way, the state and federal roles complement each other as the EPA has the authority and responsibility to determine BSER at the national level, while the states have the authority and responsibility to establish and apply standards of performance for their existing sources, taking into consideration source-specific factors where appropriate. A full discussion of ACE can be found in section III of this preamble.

Third, the EPA is finalizing new implementing regulations that apply to ACE and any future emission guidelines promulgated under CAA section 111(d). The purpose of the new implementing regulations is to harmonize aspects of our existing regulations with the statute, in a new 40 CFR part 60, subpart Ba, by making it clear that states have broad discretion in establishing and applying emissions standards consistent with the BSER. The new implementing regulations also provide changes to the timing requirements for the EPA and states to take action to more closely align with the CAA section 110 state implementation plan (SIP) and federal implementation plan (FIP) deadlines. The discussion of the final revisions to the implementing regulations is found in section IV below.

The implementing regulations (and ACE which is promulgated consistent with those regulations) make clear that the EPA, states, and sources all have distinct roles, responsibilities, and flexibilities under CAA section 111(d). Specifically, the EPA identifies the BSER; states establish standards of performance for existing sources within their jurisdiction consistent with that BSER and also with the flexibility to consider source-specific factors, including remaining useful life; and sources then meet those standards using the technologies or techniques they believe is most appropriate. As this preamble explains, in the case of ACE, the EPA has identified the BSER as a set of heat rate improvement measures. States will establish standards of performance for existing sources based on application of those heat rate improvement measures (considering source-specific factors, including remaining useful life). Each regulated source then must meet those standards using the measures they believe is appropriate (*e.g.,* via the heat rate improvement measures identified by the EPA as the BSER, other heat rate improvement measures, or other approaches such as CCS or natural gas co-firing).

These three rules have been informed by more than 1.5 million public comments on the Proposed Repeal and 500,000 public comments on the proposals for ACE and the new implementing regulations. Per CAA section 307(d)(6)(B), the EPA is providing a response to the significant comments received for each of these actions in the docket. After careful consideration of the comments, the EPA is finalizing these three rules, with revisions to what it proposed where appropriate, to provide states guidance on how to address CO_2 emissions from coal-fired power plants in a way that is consistent with the EPA's authority under the CAA.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this document is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this document at *https://www.epa.gov/stationary-sources-air-pollution/electric-utility-generating-units-emission-guidelines-greenhouse.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of these final rules and key technical documents at this same website.

C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of these final actions is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) by September 6, 2019. Under CAA section 307(b)(2), the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider a rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time

[1] Proposed Repeal, 82 FR 48036.

specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Repeal of the Clean Power Plan

A. Background for the Repeal of the Clean Power Plan

1. The Clean Power Plan

The EPA promulgated the CPP under section 111 of the CAA.[2] Section 111(b) authorizes the EPA to issue nationally applicable new source performance standards (NSPS) limiting air pollution from ''new sources'' in source categories that cause or significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.[3] In 2015, the EPA issued such a rule for GHG emissions—in particular, CO_2—from certain new fossil fuel-fired power plants [4] in light of the Agency's assessment ''that GHGs endanger public health, now and in the future.'' [5] CAA section 111(d) provides that, under certain circumstances, when the EPA issues a CAA section 111(b) standard, the EPA must develop procedures requiring each state to submit a plan to the EPA that establishes performance standards for *existing* sources in the same category.[6] The EPA relied on CAA section 111(d) to issue the CPP, which, for the first time, required states to submit plans specifically designed to limit CO_2 emissions from certain existing fossil fuel-fired power plants.

The CPP established emission guidelines for states to follow in limiting CO_2 emissions from those existing fossil fuel-fired power plants. Those emission guidelines included both state-specific ''goals'' and alternative, nationally uniform CO_2 emission performance rates for two types of existing fossil fuel-fired power plants: Electric utility steam generating units and stationary combustion turbines.[7]

In the CPP, the EPA determined that the BSER for CO_2 emissions from existing fossil fuel-fired power plants was the combination of: (1) Heat rate (*e.g.,* efficiency) improvements to be conducted at individual power plants, in combination with (2, 3) two other sets of measures based on the shifting of generation at the fleet-wide level from one type of energy source to another. The EPA referred to these three sets of measures as ''building blocks'': [8]

1. Improving heat rate at affected coal-fired steam generating units;

2. Substituting increased generation from lower-emitting existing natural gas combined cycle units for decreased generation from higher-emitting affected steam generating units; and

3. Substituting increased generation from new zero-emitting renewable energy generating capacity for decreased generation from affected fossil fuel-fired generating units.

While building block 1 relied on measures that could be applied directly to individual sources, building blocks 2 and 3 employed measures that were expressly designed to shift the balance of coal-, gas-, and renewable-generated power across the power grid.

2. Legal Challenges to the CPP, Executive Order 13783, and the EPA's Review of the CPP

On October 23, 2015, 27 states and a number of other parties sought judicial review of the CPP in the U.S. Court of Appeals for the D.C. Circuit.[9] After some preliminary briefing, the Supreme Court stayed implementation of the CPP, pending judicial review.[10] The case was then referred to an *en banc* panel of the D.C. Circuit, which held oral argument on September 27, 2016.

On March 28, 2017, President Trump issued Executive Order 13783, which affirms the ''national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.'' [11] The Executive Order directs all executive departments and agencies, including the EPA, to ''immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.'' [12] The Executive Order further affirms that it is ''the policy of the United States that necessary and appropriate environmental regulations comply with the law.'' [13] Moreover, the Executive Order specifically directs the EPA to review and initiate reconsideration proceedings to ''suspend, revise, or rescind'' the CPP ''as appropriate and consistent with law.'' [14]

In a document signed the same day as Executive Order 13783 and published in the **Federal Register** at 82 FR 16329 (April 4, 2017), the EPA announced that, consistent with the Executive Order, it was initiating its review of the CPP and providing notice of forthcoming proposed rulemakings consistent with the Executive Order.

In light of Executive Order 13783, the EPA's initiation of a review of the CPP, and notice of the EPA's forthcoming rulemakings, the EPA asked the D.C. Circuit to hold the CPP litigation in abeyance, and, on April 28, 2017, the court (still sitting en banc) granted motions to hold the cases in abeyance for 60 days and directed the parties to file briefs addressing whether the cases should be remanded to the Agency rather than held in abeyance.[15] Since then, the D.C. Circuit has issued a series of orders holding the cases in abeyance. While the case has been in abeyance, the EPA has been reviewing the CPP and providing status reports to the court describing the progress of its rulemaking.

In the course of the EPA's review of the CPP, the Agency also reevaluated its interpretation of CAA section 111, and, on that basis, the Agency proposed to repeal the CPP.[16]

3. Public Comment and Hearings on the Proposed Repeal

Publication of the Proposed Repeal in the **Federal Register** opened comment on the proposal for an initial 60-day

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[2] 42 U.S.C. 7411.

[3] *Id.* 7411(b)(1).

[4] The CPP identified ''[f]ossil fuel-fired EGUs'' as ''by far the largest emitters of GHGs among stationary sources in the U.S., primarily in the form of CO_2.'' 80 FR 64510, 64522 (October 23, 2015).

[5] Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units, 80 FR 64510, 64518 (October 23, 2015); *see also* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under section 202(a) of the CAA, 74 FR 66496 (December 15, 2009) (2009 Endangerment Finding). The substance of the 2009 Endangerment Finding, which addressed GHG emissions from mobile sources, is not at issue in this action.

[6] 42 U.S.C. 7411(d)(1) (emphasis added).

[7] *See* 80 FR 64707.

[8] *Id.*

[9] *See West Virginia* v. *EPA,* No. 15–1363 (and consolidated cases) (D.C. Cir. October 23, 2015).

[10] *West Virginia* v. *EPA,* 136 S. Ct. 1000 (2016).

[11] *See* Executive Order 13783, section 1(a).

[12] *Id.* section 1(c).

[13] *Id.* section 1(e).

[14] *Id.* section 4(a)–(c).

[15] Order, Document No. 1673071 (per curiam).

[16] *See* Proposed Repeal, 82 FR 48035 (October 16, 2017).

public comment period. The EPA held public hearings on November 28 and 29, 2017, in Charleston, West Virginia, and then extended the public comment period until January 16, 2018. In response to requests for additional opportunities for oral testimony, the EPA held three listening sessions in Kansas City, Missouri; San Francisco, California; and Gillette, Wyoming. The EPA also reopened the public comment period until April 26, 2018, giving stakeholders 192 days to review and comment on the proposal. The EPA received more than 1.5 million comments on the Proposed Repeal.

B. Basis for Repealing the Clean Power Plan

1. Authority To Revisit Existing Regulations

The EPA's ability to revisit existing regulations is well-grounded in the law. Specifically, the EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. The authority to reconsider prior decisions exists in part because the EPA's interpretations of statutes it administers ''[are not] instantly carved in stone,'' but must be evaluated ''on a continuing basis.'' [17] This is true when, as is the case here, review is undertaken ''in response to . . . a change in administrations.'' [18] Indeed, ''[a]gencies obviously have broad discretion to reconsider a regulation at any time.'' [19]

2. Legal Basis for Repeal of the Clean Power Plan

The CPP departed from the EPA's traditional understanding of its authority under section 111 of the CAA and promulgated a rule in excess of its statutory authority. Because the CPP significantly exceeded the Agency's authority, it must be repealed.[20] Fundamentally, the CPP read the statutory term ''best system of emission reduction'' so broadly as to encompass measures the EPA had never before envisioned in promulgating performance standards under CAA section 111. In contrast to its traditional regulations that set performance standards based on the application of equipment and practices at the level of an individual facility, the EPA in the CPP set standards that could only be achieved by a shift in the energy generation mix at the grid level, requiring a shift from one type of fossil-fuel-fired generation to another, and from fossil-fuel-fired generation as a whole towards renewable sources of energy. The text of the CAA is inconsistent with that interpretation, and the context, structure, and legislative history confirm that the statutory interpretation underlying the CPP was not a permissible construction of the Act.

a. CAA Requirements and Background

In 1970, Congress enacted section 111(b) of the CAA, authorizing the EPA to promulgate ''standards of performance'' for new stationary sources in certain source categories.[21] Congress also directed the EPA, under CAA section 111(d), to ''prescribe regulations which shall establish a procedure'' [22] for states to establish standards [23] for existing sources of certain air pollutants to which a standard of performance would apply if such existing source were a new source.[24]

Since 1990, new- and existing-source CAA section 111 rulemakings have been governed by the same statutory definitions.[25] The CAA defines the term ''standard of performance'' in two sections. CAA section 111(a)(1) defines it, for purposes of section 111 (which contains the new- and existing-source performance standard authority in, respectively, CAA section 111(b) and 111(d)), as:

> a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.[26]

And CAA section 302(*l*) defines ''standard of performance'' as ''a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous reduction.'' [27]

EPA's role under CAA section 111(d) is narrow. Indeed, CAA section 111(d) tasks states with ''establish[ing] standards of performance for any existing source'' and ''provid[ing] for the implementation and enforcement of such standards of performance.'' It requires further that the regulations the EPA is directed to adopt must permit the state ''to take into consideration, among other factors, the remaining useful life of the existing source to which such standard [of performance] applies.'' [28] After all, Congress found that ''air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments.'' [29]

In contrast to CAA section 111(b) (where the EPA may directly establish performance standards for emissions from new sources), the EPA implements CAA section 111(d) by issuing regulations that it calls ''emission guidelines'' [30] These guidelines provide states with information to assist them in developing state plans establishing standards of performance for existing designated facilities within their jurisdiction that are submitted to the EPA for review. Such information includes the EPA's determination of the ''best system of emission reduction,'' which is commonly referred to as the BSER.

b. The Plain Meaning of CAA Sections 111(a)(1) and (d)

CAA section 111(d) provides that ''each State shall submit to the Administrator a plan which (A) establishes *standards of performance* for any existing source for [certain air pollutants] . . . and (B) provides for the implementation and enforcement of such standards of performance.'' [31] Given how Congress has defined the phrase ''standard of performance'' for purposes of CAA section 111, the plain meaning of CAA section 111(d), therefore is that states shall submit a plan which ''establishes [a standard for

[17] *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984).

[18] *National Cable & Telecommunications Ass'n* v. *Brand X internet Services,* 545 U.S. 967, 981 (2005).

[19] *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017).

[20] As noted above, the EPA received more than 1.5 million comments on the Proposed Repeal. The Agency's consideration of and responses to significant comments are reflected in section II.B.2 of this preamble.

[21] CAA Amendments of 1970, Public Law 91–604, 84 Stat. at 1683–84 (Dec. 31, 1970); *see also* 42 U.S.C. 7411(b).

[22] *See* section IV (addressing changes to the implementing regulations).

[23] As originally enacted, CAA section 111 required states to establish ''emission standards'' for existing sources, but Congress replaced that term with ''standard of performance'' as part of the CAA Amendments of 1977. *See* Public Law 95–95, 91 Stat. at 699 (Aug. 7, 1977) (''Section 111(d)(1) . . . is amended by striking out 'emissions standards' in each place it appears and inserting in lieu thereof 'standards of performance' '').

[24] CAA Amendments of 1970, 84 Stat. at 1684; see also 42 U.S.C. 7411(d).

[25] *See infra* n.51.

[26] 42 U.S.C. 7411(a)(1).

[27] 42 U.S.C. 7602(*l*).

[28] 42 U.S.C. 7411(d)(1).

[29] 42 U.S.C. 7401(a)(3).

[30] *See American Elec. Power Co.* v. *Connecticut,* 564 U.S. 410, 424 (2011). *See generally* Section IV, *infra* (discussing the promulgation of revised implementing regulations governing the EPA's issuance of emission guidelines); 40 CFR part 60, subpart B.

[31] 42 U.S.C. 7411(d)(1) (emphasis added).

emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the [BSER] . . .] for any existing source.''

While CAA section 111(a)(1) provides that the EPA determines the BSER upon which existing-source performance standards are based, Congress expressly limited the universe of systems of emission reduction from which the EPA may choose the BSER to those systems whose ''application'' to an ''existing source'' will yield an ''achievable'' ''degree of emission limitation.'' [32] ''[W]here . . . the statute's language is plain,'' courts explain, our '' 'sole function . . . is to enforce it according to its terms.' '' [33]

The EPA begins with the meaning of ''application,'' as it appears in CAA section 111(a)(1). In the absence of a statutory definition, the term must be construed in accordance with its ordinary or natural meaning.[34] Here the ordinary meaning of ''application'' refers to the ''act of applying'' or the ''act of putting to use.'' [35] Accordingly, a standard of performance must reflect the degree of emission limitation that can be achieved by putting the BSER into use. Furthermore, the ordinary and natural use of the term ''application,'' which is derived from the verb ''to apply,'' requires both a direct object and an indirect object. In other words, someone must apply *something* to *something else* (*e.g.,* the application of general rules to particular cases). In the case of CAA section 111, the direct object is the BSER. CAA section 111(d) also provides that the indirect object is the ''existing source''—''each State shall submit to the Administrator a plan which (A) establishes standards of performance *for any existing source*'' (emphasis added). The Act further defines an ''existing source'' as ''any stationary source other than a new source,'' [36] and in turn defines a ''stationary source'' as ''any building, structure, facility, or installation which emits or may emit any air pollutant.'' [37] Consequently, CAA section 111 unambiguously limits the BSER to those systems that can be put into operation *at* a building, structure, facility, or installation. Such systems include, for example, add-on controls (*e.g.,* scrubbers) and inherently lower-emitting processes/practices/designs.

Conversely, the plain language of CAA section 111 does not authorize the EPA to select as the BSER a system that is premised on application to the source category as a whole or to entities entirely outside the regulated source category. First, Congress specified that ''standards of performance'' are established ''for new sources *within such category*'' [38] and ''for any existing source.'' [39] CAA section 111, therefore, does not allow for the establishment of standards for the source category or for entities not within the source category. Instead, CAA section 111 standards must be established for individual sources. Second, because CAA section 111 standards reflect an ''achievable'' ''degree of emission limitation'' through application of the BSER, an owner or operator must be able to achieve an applicable standard by applying the BSER to the designated facility. Accordingly, the BSER—like standards of performance—cannot be premised on a system of emission reduction that is implementable only through the combined activities of sources or non-sources. Thus, the EPA is precluded from basing BSER on strategies like generation shifting and corresponding emissions offsets because these types of systems cannot be put into use at the regulated building, structure, facility, or installation.[40]

c. Statutory Structure and Purpose Confirm That a ''System of Emission Reduction'' Must Be Applied to an Individual Source and That CAA Section 111 is Intended to Best Design, Build, Equip, Operate, and Maintain Sources so as To Reduce Emissions

While the plain meaning of CAA section 111 provides that the BSER must be applied to a building, structure, facility, or installation, Congress' intent is also manifest in the statutory structure and purpose. ''Statutory construction,'' the Supreme Court instructs, ''is a holistic endeavor.'' [41] The interpretation of a phrase ''is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.'' [42]

(1) The Statutory Structure Limits a ''System of Emission Reduction'' to ''Systems'' That Have a Potential for Application to an Individual Source

The conclusion that CAA section 111 standards are limited as described above is confirmed by considering the section's place in the overall statutory scheme. Congress tied CAA section 111 to the Best Available Control Technology (''BACT'') provisions in CAA section 165.[43] Section 165 provides that ''[a]ny major stationary source or major modification subject to [preconstruction requirements] must conduct an analysis to ensure the application of [BACT].'' [44] A permitting authority must ''conduct a BACT analysis on a case-by-case basis . . . and must evaluate the amount of emission reductions that each available emissions-reducing *technology or technique* would achieve, as well as the energy, environmental, economic and other costs . . . .'' [45] The EPA has long recommended that permitting agencies conduct this analysis through a top-down assessment of the best available and feasible control technologies for the emissions subject to BACT.[46] ''Based on

[32] *Id.*

[33] *Air Line Pilots Ass'n* v. *Chao,* 167 F.3d 602, 791 (D.C. Cir. 2018) (quoting *United States* v. *Ron Pair Enterprises,* 489 U.S. 235, 241 (1989)).

[34] *See Leocal* v. *Ashcroft,* 543 U.S. 1, 10 (2004).

[35] Merriam-Webster's Collegiate Dictionary (11th ed. 2003) (''1: an act of applying: a (1) : an act of putting to use <~ of new techniques> (2) : a use to which something is put <new ~s for old remedies>''). Definitions are also provided from when CAA section 111(a)(1) was last amended, *see* The Oxford English Dictionary (2d ed. 1989) (''The action of applying; the thing applied. 1. a. The action of putting a thing to another, of bringing into material or effective contact''), and first enacted, *see* American Heritage Dictionary of the English Language (2d ed. 1969) (''1. The act of applying or putting something on. 2. Anything that is applied, such as a cosmetic or curative agent. 3. The act of putting something to a special use or purpose.'').

[36] 42 U.S.C. 7411(a)(6).

[37] 42 U.S.C. 7411(a)(3).

[38] 42 U.S.C. 7411(b)(1)(B) (requiring the Administrator to establish performance standards ''for new sources *within such category*'' rather than for the category itself as a whole) (emphasis added)

[39] 42 U.S.C. 7411(d)(1)(A).

[40] The CPP's BSER was in part designed to consist of generation-shifting. *See, e.g.,* 80 FR 64,776 (final rule) (describing 'building blocks' 2 and 3 as ''processes of shifting dispatch from steam generators to existing NGCC units and from both steam generators and NGCC units to renewable generators.'').

[41] *Czyzewski* v. *Jevic Holding Corp.,* 137 S. Ct. 973, 985 (2017) (citing *United Savings Ass'n* v. *Timbers of Inwood Forest Associates,* 484 U.S. 365, 371 (1988)).

[42] *Utility Air Regulatory Group* v. *EPA,* 573 U.S. 302, 321 (2014).

[43] 42 U.S.C. 7479(3) (''In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of this title.'').

[44] U.S. EPA, DRAFT New Source Review Workshop Manual: Prevention of Significant Deterioration and Nonattainment Area Permitting, B. 1 (October 1990) (''NSR Manual''), *available at https://www.epa.gov/sites/production/files/2015-07/documents/1990wman.pdf.* Though the EPA never finalized this draft, it continues to follow the analytical approach to the BACT analysis contained within the NSR Manual. *See also* U.S. EPA, PSD and Title V Permitting Guidance for Greenhouse Gases (March 2011) (''GHG Permitting Guidance''), *available at https://www.epa.gov/sites/production/files/2015-07/documents/ghgguid.pdf.*

[45] GHG Permitting Guidance at 17 (emphasis added).

[46] *See id.* at 17–44.

this [technology] assessment, the permitting authority must [then] establish a numeric emission limitation that reflects the maximum degree of reduction achievable. . . .'' [47]

In no event, Congress specified, can application of BACT result in greater emissions than allowed by ''any applicable standard established pursuant to section [1]11 or [1]12 . . . .'' [48] To ensure such an exceedance does not occur, NSPS serve as the base upon which BACT determinations are made and are commonly viewed as the BACT ''floor.'' [49] However, because Congress refers to ''any applicable standard established pursuant to section [1]11,'' without reference to either subsection (b) or (d), any applicable existing source standard would also function as a BACT ''floor.'' [50]

The EPA has consistently taken the position that BACT encompasses ''all 'available' control options . . . that have the potential for practical *application to the emissions unit* and the regulated pollutant under evaluation.'' [51] This is so because BACT reflects a level of control that the permitting agency ''determines is achievable *for such facility* through *application of* production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control.'' [52] Put simply, both the statutory text and the EPA's long-standing interpretation provide that BACT is limited to control options that can be applied to the source itself and does not include control options that go beyond the source.

Because CAA section 111 operates as a floor to BACT, section 111 cannot be interpreted to offer a broader set of tools than are available under section 165. Also, because BACT is limited to control options that are applied to an individual source, so too with section 111. The explicit statutory link of CAA section 111 standards to BACT, the statutory definition of the latter, the Agency's consistent position that BACT must apply to and be achievable for a particular facility, and the text of CAA section 111(b) and 111(d), confirm the conclusion that the text of 111(a)(1) can only be read to mean that standards of performance (and the BSER on which they are predicated) are likewise measures applied to individual facilities.

(2) The Purpose of CAA Section 111 is To Design, Build, Equip, Operate, and Maintain Individual Sources so as To Reduce Emissions

Congress intended that CAA section 111 would set minimum requirements [53] on individual sources to be designed, built, equipped, operated, and maintained to reduce emissions. This purpose is evidenced in the history of CAA section 111(a)(1)'s text and corroborated by legislative history. CAA section 111 was originally enacted as part of the 1970 CAA Amendments. In that enactment, state plans under CAA section 111(d) were to establish ''emission standards'' rather than ''standards of performance.'' The EPA's CAA section 111(d) implementing regulations, issued in 1975, provided that, in the case of existing sources, the EPA would issue ''emissions guidelines,'' that these guidelines would ''reflect the degree of emission reduction achievable through the application of the [BSER] which (taking into account the cost of such reduction) the Administrator has determined has been adequately demonstrated for designated facilities,'' and that state plans establishing standards of performance for existing sources would be developed in light of these guidelines.[54] Then in 1977, Congress replaced the term ''emission standard'' under CAA section 111(d) with the phrase ''standard of performance''—a phrase defined for all of CAA section 111 in section 111(a)(1). Thus, the history behind CAA section 111(a)(1) is relevant to understanding EPA's authority for both sections 111(b) and (d).

The 1970 enactment of CAA section 111 represents a choice between two alternative approaches to direct federal regulation of stationary sources. Under the House bill, the Administrator would have been authorized to establish ''emission standards'' for new sources of pollutants that may contribute substantially to endangerment of the public health or welfare. These standards would have ''require[d] that new sources of such emissions be *designed and equipped* to maximize emission control insofar as technologically and economically feasible.'' [55] The House bill did not contain any analogous provisions for existing sources. Nevertheless, the House bill contemplated that under CAA section 111, individual sources would be designed to emit less.

Under the Senate approach, the Administrator would have established

[47] *Id.* at 17, 44–46.

[48] 42 U.S.C. 7479(3).

[49] GHG Permitting Guidance, 25 n.64 (''While this guidance is being issued at a time when no NSPS have been established for GHGs, permitting authorities must consider any applicable NSPS as a controlling floor in determining BACT once any such standards are final.'').

[50] Accordingly, certain commenters incorrectly argue that the scope of CAA section 169 is irrelevant to regulating existing sources under CAA section 111(d) because *only* CAA section 111(b) standards (*i.e.,* NSPS), not CAA section 111(d) existing-source standards, apply to sources subject to BACT. However, both CAA section 111(b) and (d) rely on the same definition of ''standard of performance'' in CAA section 111(a), and the term's statutory history (that is, its evolution through repeated acts of Congress from 1970 to 1990) supports the conclusion that Congress intended for the term to have the same meaning under both programs. Between the 1970 and 1977 CAA Amendments, ''standards of performance'' applied only to the regulation of new sources under CAA section 111(b); existing sources, on the other hand, were required to meet ''emission standards,'' which was an undefined term. *See* Public Law 91–604, 84 Stat. at 1683–84. Between the 1977 and 1990 CAA Amendments, CAA section 111(a)(1) provided three context-specific definitions: One definition applied to *all* new stationary sources regulated under CAA section 111(b) (basing standards on the best technological system of continuous emission reduction (''TSCER'')); the second applied only to new *fossil-fuel-fired* sources regulated under CAA section 111(b) (basing standards on the TSCER *and* requiring a percent reduction in emissions); and a third applied to *existing* sources regulated under CAA section 111(d) (basing standards on the best system of continuous emission reduction). *See* Public Law 95–95, 91 Stat. at 699–700. In 1990, however, Congress replaced the three separate definitions with a singular definition of ''standard of performance'' under CAA section 111(a)(1), to apply throughout CAA section 111, based on application of the BSER. *See* Public Law 101–549, 104 Stat. at 2631. The legislative history of CAA section 111 demonstrates that Congress knew full well how to require either that the regulations applying to new and existing sources would be different in definition and scope (as in both the 1970 and 1977 versions of the Act) or that they would be the same and demonstrates that in 1990 they plainly chose the latter course.

[51] GHG Permitting Guidance, 24 (emphasis added).

[52] 42 U.S.C. 7479(3) (emphasis added).

[53] In a 1978 BACT guidance document, the EPA explained that performance standards reflect emission limits ''which can reasonably be met by all new or modified sources in an industrial category, even though some individual sources are capable of lower emissions. Additionally, because of resource limitations in the EPA, revision of new source standards must lag somewhat behind the evolution of new or improved technology. Accordingly, new or modified facilities in some source categories may be capable of achieving lower emission levels that [sic] NSPS without substantial economic impacts. The case-by-case BACT approach provides a mechanism for determining and applying the best technology in each individual situation. Hence, NSPS and NESHAP are Federal guidelines for BACT determinations and establish minimum acceptable control requirements for a BACT determination.'' U.S. EPA, Guidelines for Determining Best Available Control Technology, 3 (December 1978).

Further, while some commenters suggest that the BSER must reflect the ''greatest degree of emission control,'' citing to section 113 of Senate bill 4358 (S. 4358, at 6, 1970 Legis. Hist. at 554–55), Congress imposed no such requirement. *See Sierra Club,* 657 F.2d at 330 (''we believe it is clear that this language is far different from the words Congress would have chosen to mandate that the EPA set standards at the maximum degree of pollution control technologically achievable.'').

[54] 40 FR 53346.

[55] H.R. Conf. Rep. No. 91–1783, 46 (December 17, 1970) (emphasis added).

''standards of performance'' for new sources based ''on the greatest emission control possible through application of [the] latest available control technology.'' [56] This would have ensured ''that new stationary sources are *designed, built, equipped, operated, and maintained* so as to reduce emission[s] to a minimum.'' [57] Accordingly, such standards would have reflected ''the degree of emission control which can be achieved through process changes, operation changes, direct emission control, or other methods.'' [58] A separate provision governing emissions of ''selected agents'' authorized the Administrator to develop ''emission standards'' for both new and existing sources.[59] However, the Senate ''recognize[d] that certain old facilities may use equipment and processes which are not suited to the application of control technology. The [Administrator] would be authorized therefore to waive the application of standards . . . .'' [60]

The conference substitute settled on the language largely reflected in the current wording of CAA section 111(a)(1); the differences between the 1970 enactment and the current version are not relevant to this discussion. As explained above, *both* the Senate and House bills contemplated only control measures that would lead to better design, construction, operation, and maintenance of an individual source [61] and, in the case of existing sources under the Senate bill, the waiver of standards if certain sources could not apply new control technologies. Accordingly, recognizing that a ''system of emission reduction'' is limited to control technologies or techniques that can be integrated into an individual source's design or operation (*i.e.,* add-on controls and lower-emitting processes/practices/designs) is the only interpretation compatible with the fundamental principle, reflected in the original competing drafts of the provision, that sources should be designed, built, equipped, operated, and maintained to reduce emissions.[62]

d. The CPP Unlawfully Exceeds the Scope of CAA Section 111(a)(1) and Must Be Repealed

Before the CPP, the EPA had issued only six CAA section 111(d) rulemakings, in the form of a ''guideline document'' with corresponding ''emission guidelines.'' [63] Conversely, the EPA has issued around seventy CAA section 111(b) rulemakings, including several for new fossil-fuel-fired steam-generating units.[64] Every one of those rulemakings applied technologies, techniques, processes, practices, or design modifications directly to individual sources.

In the CPP, the EPA determined that the BSER for reducing CO_2 emissions from existing fossil fuel-fired power plants was the combination of three ''building blocks'':

1. Improving heat rate at individual affected coal-fired steam generating units;

2. Substituting increased generation from lower-emitting existing natural gas combined cycle units for decreased generation from higher-emitting affected steam generating units; and

3. Substituting increased generation from new zero-emitting renewable energy generating capacity for decreased generation from affected fossil fuel-fired generating units.

This was the first time the EPA interpreted the BSER to authorize measures wholly outside a particular source.[65] The EPA reached this determination by interpreting the statutory term ''application'' as if it instead read ''implementation'' (without pointing to any legal basis for equating those terms), and interpreting the phrase ''system of emission reduction'' broadly as ''a set of measures that work together to reduce emissions and that are implementable by the sources themselves.'' [66] ''As a practical matter,'' the Agency continued, ''the 'source' includes the 'owner or operator' of any building, structure, facility, or installation for which a standard of performance is applicable.'' [67] The EPA then concluded that the breadth of a dictionary definition of the word ''system'' established the bounds of its statutory authority, finding that the phrase '' 'system of emission reduction' . . . means a set of measures that source owners or operators can implement to

[56] *Id.* (describing the approach under the Senate amendment).

[57] S. Rep. No. 91–1196, 15–16 (September 17, 1970) (emphasis added).

[58] *Id.* at 17.

[59] *Id.* at 18–19.

[60] *Id.* at 19.

[61] References to ''other alternatives,'' ''other means,'' or ''other methods'' in the Senate bill and accompanying report are not evidence that Congress intended to confer boundless discretion. In fact, these terms must be interpreted in light of the other specifically listed control techniques. For example, the Senate bill's reference to ''control technology,'' ''processes,'' and ''operating methods'' are properly read to denote measures that can be applied to individual sources—and ''other alternatives'' must be interpreted *ejusdem generis:* in the same fashion.

[62] To be sure, the Agency does not contend that a ''system of emission reduction'' is limited to technological improvements. Indeed, the CAA Amendments of 1990 make clear that CAA section 111 is not to be limited to ''technological systems.'' *See supra* n. 51 (discussing amendments to CAA section 111(a)(1)). But that does not mean CAA section 111 therefore authorizes basing BSER on generation shifting ''measures,'' such as substitute generation from lower- or non-polluting power plants, which cannot be applied to individual sources like add-on controls or inherently lower-emitting processes/practices/designs.

[63] (*See* 1) Phosphate Fertilizer Plants, Final Guideline Document Availability, 42 FR 12022 (March. 1, 1977) [Final Guideline Document: Control of Fluoride Emissions from Existing Phosphate Fertilizer Plants, March 1977, Doc. No. EPA–450/2–77–005]; 2) Emission Guideline for Sulfuric Acid Mist, 42 FR 55796 (October 18, 1977); 3) Kraft Pulp Mills; Final Guideline Document; Availability, 44 FR 29828 (May 22, 1979) [Kraft Pulping, ''Control of Emissions from Existing Mills,'' March 1979, Doc. No. EPA–450/2–78–003b]; 4) Primary Aluminum Plants; Availability of Final Guideline Document, 45 FR 26294 (Apr. 17, 1980) [Primary Aluminum: Guidelines for Control of Fluoride Emissions from Existing Primary Aluminum Plants, December 1979, Doc. No. EPA–450/2–78–049b]; 5) Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills, 61 FR 9905 (March 12, 1996); and 6) Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, 70 FR 28606 (May 18, 2005) (hereafter, the Clean Air Mercury Rule or CAMR) (vacated in *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2007) (reviewing an action that sought to shift regulation of certain emissions from power plants from the CAA section 112 hazardous air pollutants regime to the section 111 standards regime and holding that the EPA failed to comply with the delisting requirements of section 112(c)(9) and thus vacating the corresponding section 111 standards for electric utility steam generating units). This list of six CAA section 111(d) rulemakings does not include any guideline documents mandated by and carried out in compliance with CAA section 129 (governing solid waste incinerator units).

[64] *See generally* 40 CFR part 60, subparts D–TTTT. In fact, steam-generating units were among the first sources regulated under section 111(b). *See* 36 FR 24876 (December 23, 1971) (promulgating standards for steam generators, portland cement plants, incinerators, nitric acid plants, and sulfuric acid plants).

[65] CAMR, which relied in part on a cap-and-trade mechanism, was still ultimately ''based on control technology available in the relevant timeframe,'' an approach fundamentally different than the CPP's second and third ''building blocks,'' which were not based on systems that could be applied to or at individual sources. Indeed, the rule explained that the BSER refers to ''the combination of the cap-and-trade mechanism *and the technology needed* to achieve the chosen cap level.'' 70 FR 28620 (emphasis added). Accordingly, the Agency concluded that it would be ''reasonable to establish a cap on [the basis of using a particular technology] and require compliance with that cap at a later point in time when the necessary technology becomes widely available.'' *Id.* To the extent that CAMR's BSER (*i.e.,* the combined control technology and cap-and-trade program) is premised on application to the source category (as opposed to an individual source), however, CAMR would be unlawful. Trading as a compliance mechanism under CAA section 111 is discussed in section III.F.2.a of this preamble.

[66] 80 FR 64762 (citing the Oxford Dictionary of English (3rd ed.) (2010), among others). The EPA reached this interpretation in part on the assumption that ''the terms 'implement' and 'apply' are used interchangeably.'' *See* Legal Memorandum Accompanying Clean Power Plan for Certain Issues at 84 n.175.

[67] 80 FR 64762.

achieve an emission limitation applicable to their existing source.'' [68]

In reviewing the CPP, the EPA concludes that the interpretation relied upon in the CPP ignored or misinterpreted critical statutory elements and rules of statutory construction. After reconsidering the relevant statutory text, structure, and purpose, the Agency now recognizes that Congress ''spoke to the precise question'' of the scope of CAA section 111(a)(1) and clearly precluded the unsupportable reading of that provision asserted in the CPP. Accordingly, this action repeals the CPP.[69]

(1) The CPP Is Impermissibly Based on ''Implementation'' Rather Than ''Application'' of the BSER

CAA section 111(a)(1) provides that standards of performance reflect an emission limitation achievable ''through the application of the [BSER] . . . .'' In the Legal Memorandum accompanying the CPP, the Agency stated in a footnote that ''the terms 'implement' and 'apply' are used interchangeably.'' [70] Thus, the Agency decided, ''the system must be limited to measures that can be implemented—''appl[ied]''—by the sources themselves . . . .'' [71] But Congress does not in fact use these terms interchangeably in the Act, and in CAA section 111(a)(1), as in other source-focused standard-setting provisions in the Act, used a term (''application'') meaningfully different than the one CPP read into that section (''implementation'')—and the term that Congress actually used is one that reflects the CAA's other source-focused standard-setting provisions.[72]

The Act is replete with provisions calling for the ''implementation'' of ''a system,'' [73] ''control measures,'' [74] ''emission reduction measures,'' [75] and even ''steps, *by owners or operators of stationary sources,*'' [76] but CAA section 111(a)(1) is not among them. Congress defines ''implementing'' under CAA section 105(a)(1)(A) as ''any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs [for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards].'' [77] But again, ''applying'' is not included in this list defining ''implementing.'' In the case of the Act's standard-setting provisions, on the other hand, BACT and maximum achievable control technology (MACT) requirements—like CAA section 111—are based on ''application of'' control measures to individual sources.

Functionally, the two terms send different signals. ''Implementation'' requires a subject and direct object (I implement the plan), whereas ''application'' requires a subject, direct object, and indirect object (I apply the protocol to the subject). That is, an owner or operator can implement a system (without anything more and without any particular object of the system being implied), but an owner/operator must apply a system *to* another object (*i.e.,* the source). CAA section 111 illustrates this distinction. Congress provided, in CAA section 111(d)(1), that state plans must provide ''for the implementation and enforcement of such standards of performance,'' but that EPA's regulations must also permit a state ''in applying a standard of performance to any particular source'' to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies. Thus, whereas state plans more broadly ''implement'' the CAA section 111(d) program, states ''appl[y]'' standards to individual sources. Congress could have defined a standard of performance as reflecting the ''implementation of the BSER by the owner or operator of a stationary source,'' but Congress did not. Simply put, equating the terms ''implement'' and ''apply'' conflicts with the plain language of CAA section 111(a)(1) and their use throughout the Act; this conflict is compounded by the conflation of the source with its owner, different concepts that are separately defined, *see* CAA section 111(a)(3), (5).

Now take generation shifting, the basis for the second and third ''building blocks'' of the CPP's BSER. The CPP recognized that an owner or operator of a regulated source can ''shift'' power-producing operations to a different facility, such as a nuclear power plant, through bilateral contracts for capacity or by reducing utilization. But just because generation shifting is ''implementable'' by an owner or operator (*i.e.,* just because an owner or operator of a given source can subsidize generation elsewhere that will reduce demand for generation from that) does not mean that generation shifting can be ''applied'' to the source.[78] And indeed, the CPP shifted generation from one regulated source category to another and from both those regulated source categories together to other forms of electricity generation outside any regulated source category. Because the CPP is premised on ''implementation of the BSER by a source's owner or operator'' and not ''application of the [BSER]'' to an individual source, the rule contravenes the plain language of CAA section 111(a)(1) and must be repealed.

[68] *Id.* The EPA acknowledged, nonetheless, that ''regulatory requirements'' in the CPP would be based ''on measures the affected EGUs can implement to assure that electricity is generated with lower emissions'' and that ''do not require reductions in the total amount of electricity produced.'' *Id.* at 64778. But the EPA did not exclude such ''measures'' (*i.e.,* reduced utilization and demand-side energy efficiency) as being outside the scope of the dictionary definition of ''system.'' Indeed, the EPA believed they would play an important compliance role under the CPP. *See id.* at 64753–657 (discussing reduced utilization and demand-side energy efficiency measures under rate-based and mass-based state plans). *See also* n. 83, *infra.*

[69] One commenter asserted that, rather than repeal the CPP, the EPA should retain building block 1. As explained in the Proposed Repeal, however, while heat rate improvement measures may be considered in a CAA section 111 standard, ''building block 1, as analyzed, cannot stand on its own. 80 FR 64758 n. 444; see also *id.* at 64658 (discussing severability of the building blocks).'' 82 FR 48039 n.5. Accordingly, today's action repeals the whole of the CPP and does not retain building block 1 as the BSER. In any case, as discussed in the ACE proposal, ''building block 1, as constructed in [the] CPP, does not represent an appropriate BSER, and ACE better reflects important changes in the formulation and application of the BSER in accordance with the CAA.'' 83 FR 44756 (discussing the EPA's change in approach to analyzing heat rate improvement measures). See section III for the EPA's evaluation of heat rate improvement measures under ACE.

[70] Legal Memorandum Accompanying Clean Power Plan for Certain Issues at 84 n.175.

[71] 80 FR 64720.

[72] *See, e.g.,* 42 U.S.C. 7412(d)(2) (describing MACT as ''through application of measures, processes, methods, systems or techniques including, but not limited to, measures which—(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications, (B) enclose systems or processes to eliminate emissions, (C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point, (D) are design, equipment, work practice, or operational standards . . . , or (E) are a combination of the above;''); *id.* at 7479(3) (describing BACT as ''achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control'').

[73] 42 U.S.C. 7412(r)(7)(H)(vii) (''the Administrator . . . shall develop and implement a system for providing off-site consequence analysis information'').

[74] *Id.* 7511a(b)(2) (''Such plan provisions shall provide for the implementation of all reasonably available control measures'').

[75] *Id.* 7412(i)(5)(C) (''prior to implementation of emissions reduction measures'').

[76] *Id.* 7410(a)(2)(F) (emphasis added) (''require, as may be prescribed by the Administrator—(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources'').

[77] 42 U.S.C. 7405(a)(1)(A).

[78] A contract, for example, is neither a ''system'' nor ''applied to'' a source.

(2) Dictionary Definitions Cannot Confer an ''Infinitude'' of Possibilities

Although the word ''system'' is not defined in the CAA, ''[t]he meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.'' [79] Thus, the issue is not whether the dictionary provides a broad definition of the word ''system,'' but what are the permissible bounds of the *legal* meaning of the word ''system.'' The precise question in this case is whether the word ''system'' as used in CAA section 111 encompasses any ''set of measures'' [80] to reduce emissions, or whether it is limited to lower-emitting processes, practices, designs, and add-on controls that are applied at the level of the individual facility.

''System,'' as used in CAA section 111, cannot be read to encompass *any* ''set of measures'' that would—through some chain of causation—lead to a reduction in emissions. As an initial matter, Congress did not use the phrase ''set of measures'' in CAA section 111. On its own, this phrase could create unbounded discretion in the Agency. Moreover, even when the term ''measures'' is used elsewhere in the Act, it is intended to be limited. For example, CAA section 112 emission standards are derived ''through application of *measures,* processes, methods, systems or techniques.'' ''Measures,'' are further defined to include measures which:

- Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,
- enclose systems or processes to eliminate emissions,
- collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,
- are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h) of CAA section 111, or
- are a combination of the above.[81]

''Measures,'' as Congress provides, are limited to control measures that can be integrated into an individual source's design or operation. ''Measures'' do not include shifting production away from the regulated source. The CPP read ''system'' in CAA section 111(a)(1) to mean any ''set of measures,'' relying on the dictionary, and then determined that there was no limitation on those ''set of measures'' so long as they were measures that could be implemented through obligations placed on the owner or operator of a source.[82] At both steps, the CPP relied on an absence of an express textual commandment forbidding these open-ended interpretations. That methodology is untenable.

Construing ''system'' to offer such an ''infinitude'' [83] of possibilities would have significant implications. The fact is, fossil fuel-fired EGUs operate within an interconnected ''system.'' Thus, any action that would affect electricity rates will have generation-shifting and potentially emission-reduction consequences. By the very nature of the interconnected grid, EPA's authority to determine the BSER under CAA section 111 is, under the Agency's prior interpretation, stretched to every aspect of the entire power sector. This cannot have been the intent of the Congress that enacted CAA section 111.

The D.C. Circuit has previously disapproved of a federal agency's expansive reading of its authority in analogous circumstances. In *Cal ISO,* the D.C. Circuit vacated the Federal Energy Regulatory Commission's (''FERC'') attempt to reform a utility's governing structure on the theory that FERC's statutory authority over ''practice[s] . . . affecting [a] rate'' gave FERC ''authority to regulate anything done by or connected with a regulated utility, as any act or aspect of such an entity's corporate existence could affect, in some sense, the rates.'' [84]

Upholding FERC's interpretation of ''practice'' to include replacing the governing board of California's Independent System Operator Corporation, the Court warned, could authorize FERC to ''dictate the choice of CEO, COO, and the method of contracting for services, labor, office space, or whatever one might imagine . . . .'' [85] But where ''the text *and reasonable inferences from it* give a clear answer . . . that . . . is 'the end of the matter.' '' [86] There is no need, therefore, to consider ''such parade of horribles.'' [87]

The Court explained that, ''no matter how important the principle of ISO independence is to the Commission, '[the FERC Order] is merely a regulation,' and cannot be the basis to override the limitations of 'statutes enacted by both houses of Congress and signed into law by the president.'' [88] The court reasoned that both ''the history of the application of this and similar statutes and by the implications of FERC's amorphous defining of the term'' firmly barred FERC's attempt to stretch its authority.[89] On this point, Congress's intent is ''crystal clear''—FERC had no authority to ''reform and regulate the governing body of a public utility under the theory that corporate governance constitutes a 'practice' for ratemaking authority purposes.'' [90]

The EPA's prior interpretation underlying the CPP is untenable for the same reasons. The EPA began, like FERC, with an ordinary statutory term (''system'') and then read into it maximally broad authority to shift generation away from coal-fired and gas-fired power plants to other electricity producers on the basis that generation shifting would cause those regulated sources to be displaced and therefore not be a source of emissions. But for nearly 45 years prior to the CPP, this Agency had never understood CAA section 111 to confer upon it the implicit power to restructure the utility industry through generation-shifting measures. Indeed, the EPA has issued many rules under CAA section 111 (both the limited set of existing-source rules under CAA section 111(d) and the much larger set of new-source rules under CAA section 111(b)). In all those rules, the EPA determined that the BSER consisted of add-on controls or lower-emitting processes/practices/designs that can be applied to individual sources.[91]

The CPP deviated from this settled understanding of CAA section 111. By embracing an expansive dictionary definition of ''system,'' [92] the EPA ignored that the text and structure of the Act expressly limited the scope of the term ''system'' in a way that foreclosed the CPP's expansive definition. The Agency concluded that actions that would cause generation to shift from higher-emitting to lower- or non-

[79] *King* v. *Burwell,* 135 S. Ct. 2480, 2489 (2015) (quoting *FDA* v. *Brown & Williamson Corp.,* 529 U.S. 120, 132 (2000)).

[80] 80 FR 64762.

[81] 42 U.S.C. 7412(d)(2).

[82] The CPP identified purported limitations to the underlying legal interpretation (*e.g.,* ''system'' does not extend to measures that directly target consumer behavior), *see* 80 FR 64776–779, but those purported limitations still led to an interpretation that far exceeded the bounds of the authority actually conferred by Congress on the EPA.

[83] *See Cal. Indep. Sys. Operator Corp.* v. *FERC,* 372 F.3d 395, 401 (D.C. Cir. 2004) (''*Cal ISO*'').

[84] *Id.*

[85] *Id.* at 403.

[86] *Id.* at 401 (citing *Brown* v. *Gardiner,* 513 U.S. 115, 120 (1994)) (emphasis in original).

[87] *Id.* at 403.

[88] *Id.* at 404.

[89] *Id.* at 402.

[90] *Id.*

[91] See *supra* n. 66 (discussing CAMR).

[92] 80 FR at 64720 (defined by the Oxford Dictionary of English as ''a set of things or parts forming a complex whole; a set of principles or procedures according to which something is done; an organized scheme or method; and a group of interacting, interrelated, or independent elements'').

emitting power generators represent a means of reducing CO_2 emissions from existing fossil fuel-fired electric generating units—and thus constituted a ''system'' within the meaning of CAA section 111. Taken to its logical end, however, any action affecting a generator's operating costs could impact its order of dispatch and lead to generation shifting. This could include, for example, minimum wage requirements or production caps. It is axiomatic that ''Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.'' [93] Because Congress clearly did not authorize CAA section 111 standards to be based on *any* ''set of measures,'' the EPA need not address the potential consequences of deviating from our historical practice under CAA section 111 when determining whether the CPP's interpretation was a permissible reading of the statute. Like the D.C. Circuit in *Cal ISO,* the EPA concludes that the text and reasonable inferences from it give a clear answer: ''system'' does not embody any conceivable ''set of measures'' that might lead to a reduction in emissions, but is limited to measures that can be applied to and at the level of the individual source

(3) Basing BSER on Generation Shifting Is Not Authorized by Congress

On the question of whether basing BSER on generation shifting is precluded by the statute, the major question doctrine instructs that an agency may issue a major rule only if Congress has *clearly* authorized the agency to do so. As the Supreme Court has stated, ''We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.' '' [94] Although the Court has not articulated a bright-line test, its cases indicate that a number of factors are relevant in distinguishing major rules from ordinary rules: ''the amount of money involved for regulated and affected parties, the overall impact on the economy, the number of people affected, and the degree of congressional and public attention to the issue.'' [95]

While the EPA believes that today's action is based on the only permissible reading of the statute and would reach that conclusion even without consideration of the major question doctrine, the EPA believes that that doctrine should apply here and that its application confirms the unambiguously expressed intent of CAA section 111. The CPP is a major rule. At the time the CPP was promulgated, its generation-shifting scheme was projected to have billions of dollars of impact on regulated parties and the economy, would have affected every electricity customer (*i.e.,* all Americans), was subject to litigation involving almost every State in the Union, and, as discussed in the following section, would have disturbed the state-federal and intra-federal jurisdictional scheme. Building blocks 2 and 3 are far afield from the core activity of CAA section 111—indeed, no section 111 rule of the scores issued has ever been based on generation shifting since the enactment of CAA section 111 in 1970. Because the CPP is a major rule, the interpretative question raised in CAA section 111(a)(1) (*i.e.,* whether a ''system of emission reduction'' can consist of generation-shifting measures) must be supported by a clear-statement from Congress.[96] As explained above, however, it is not—indeed, Congress has directly spoken to this precise question and precluded the interpretation of CAA section 111 advanced by the EPA in the CPP.

Further evidence comes from the notable absence of a valid limiting principle to basing a CAA section 111 rule on generation shifting. In the CPP, the EPA explained that the Agency ''has generally taken the approach of basing regulatory requirements on controls and measures designed to reduce air pollutants from the production process without limiting the aggregate amount of production.'' [97] But by shifting focus to the entire grid (which includes regulated sources and non-sources), the Agency could empower itself to order the wholesale restructuring of any industrial sector (whether or not it has authority to even regulate all the actors within that sector—so long, in keeping with the interpretation underlying the CPP, as it can place obligations on the owners and operators over whom it does have authority to carry out a ''system'' that goes beyond the EPA's actual direct reach). Appealing to such factors as ''cost'' and ''feasibility'' [98] as putative constraints on EPA's authority, furthermore, does not provide any assurance—indeed, the D.C. Circuit traditionally ''grant[s] the [A]gency a great degree of discretion in balancing them.'' [99] Thus, it is not reasonable to find in this statutory scheme Congressional intent to endow the Agency with discretion of this breadth to regulate a fundamental sector of the economy.

As a final point, the CPP not only advanced a broad reading of CAA section 111(a)(1), the rule applied that interpretation to ''the source category as a whole'' [100] to cause a reduction in coal-fired generation.[101] To do so, the CPP relied on ''emission reduction approaches that focus on the machine as a whole—that is, the overall source category—by shifting generation from dirtier to cleaner sources in addition to emission reduction approaches that focus on improving the emission rates of individual sources.'' [102] Consequently, it was designed as ''an emission guideline for an entire category of existing sources . . . .'' [103] However, by acting as a guideline for an entire category, the CPP ignored the statutory directive to establish standards *for* sources and overextended federal authority into matters traditionally reserved for states: ''administration of integrated resource planning and . . . utility generation and resource portfolios.'' [104]

(4) Basing BSER on Generation Shifting Encroaches on FERC and State Authorities

The Federal Power Act (FPA) establishes the dichotomy between federal and state regulation in the electricity sector by drawing ''a bright line easily ascertained, between state and federal jurisdiction.'' [105] The Supreme Court recently observed that, under the FPA, FERC has ''exclusive jurisdiction over wholesale sales of electricity in the interstate market'' and

[93] *Whitman* v. *American Trucking,* 531 US 457, 466 (2001). *See also* Letter from Neil Chatterjee, Chairman, Fed. Energy Reg. Comm'n, to Andrew Wheeler, Administrator, EPA at 5 (Oct. 31, 2018) (Docket ID# EPA–HQ–OAR–2017–0355–24053) (''The Supreme Court has explained several times that Congress 'does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.' The challenges posed by global climate change present 'question[s] of deep 'economic and political significance' that [are] central to [the] statutory scheme[s]' administered by both the Agency and the Commission.'') (internal citation omitted).

[94] *Utility Air Regulatory Group* v. *EPA,* 573 U.S. 302, 324 (2014) (quoting *Brown & Williamson,* 529 U.S. at 159).

[95] *U.S. Telecom Ass'n* v. *FCC, 855 F.3d 381,* 422–23 (D.C. Cir. 2017) (internal citations omitted).

[96] The EPA acknowledges that for the reasons noted above, its position on this major rule issue has evolved since the EPA addressed it in the CPP, 80 FR 64,783. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009).

[97] 80 FR 64762.

[98] *See* Legal Memorandum Accompanying Clean Power Plan for Certain Issues at 117–20.

[99] *Lignite Energy Council* v. *EPA,* 198 F.3d 930, 933 (D.C. Cir. 1999).

[100] 80 FR 64727.

[101] *Id.* at 64665.

[102] 80 FR 64725–726; see also *id.* at 64726 (noting ''consideration of emission reduction measures at the source-category level'').

[103] CPP RTC Chapter 1A, 170–72.

[104] *New York* v. *FERC,* 535 US 1, 24 (2002).

[105] *Fed. Power Comm'n* v. *S. Cal. Edison Co.,* 376 U.S. 205, 215 (1964).

establishing the associated just and reasonable rates and charges.[106] However, ''the law places beyond FERC and leaves to the States alone, the regulation of 'any other sale'—most notably, any retail sale—of electricity.'' [107] Therefore, under the FPA, Congress limited the jurisdiction of FERC ''to those matters which are not subject to regulation by the States,'' including ''over facilities used for the generation of electric energy.'' [108] Indeed, ''the States retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost, and other related state concerns.'' [109] ''Such responsibilities include ''authority over the need for additional generating capacity [and] the type of generating facilities to be licensed.'' [110] Thus, the FPA ''not only establishes an affirmative grant of authority to the federal government to regulate wholesale sales and transmission of electricity in interstate commerce, but also draws a line where that exclusive authority ends and the state's exclusive authority to regulate other matters . . . begins.'' [111]

Courts have observed that regulation of other areas may incidentally affect areas within these exclusive domains, but there is no room for direct regulation by States in areas of FERC domain or vice-versa, and such regulation that would achieve indirectly what could not be done directly is also prohibited.[112] Just as ''FERC has no authority to direct or encourage generation'' [113] absent clear authority from Congress, neither does (indeed, *a fortiori* so much the less does) the EPA.[114] The EPA has no more ability to ''do indirectly what it could not do directly'' than FERC would with respect to matters that the FPA left to the states. Historically, any traditional environmental regulation of the power sector may have incidentally affected these domains without indirectly or directly regulating within them. For example, an on-site control, such as a scrubber, may affect rate determinations as it is factored into potentially recovered costs. The CPP, however, included a BSER that was based largely on measures and subjects exclusively left to FERC and the states, rather than inflicting only permissible, incidental effects on those domains.

The CPP identified as part of the BSER generation-shifting measures. Increased renewable generation capacity, building block 3, falls within a state's authority to determine its generation mix and to direct the planning and resource decisions of utilities under its jurisdiction.[115] Additionally, increased utilization of natural gas combined cycle (NGCC) plants, building block 2, falls within that state authority and within FERC's authority to determine just and reasonable rates by requiring a conclusion that the associated costs of increased utilization rates are reasonable, and, further ignores these areas of exclusive regulation by neglecting to consider changes to regional transmission organization (RTO) and ISO dispatch procedures necessary to achieve the increased utilization rates. By including generation-shifting measures within the states' and FERC's purview in the BSER, rather than relying on traditional controls within the EPA's purview, the EPA established a rule predicated largely upon actions in the power sector outside of the scope of the Agency's authority to compel. Some generation shifting may be an incidental effect of implementing a properly established BSER (*e.g.,* due to higher operation costs), but basing the BSER itself on generation shifting improperly encroaches on FERC and state authorities.

Further, the actual effect of the CPP as anticipated by the EPA was that the states would impose standards of performance based on the EPA's BSER, and sources would largely rely on generation-shifting measures to comply with those standards. In its analysis of potential energy impacts associated with the rule, the CPP modeling ''presume[d] policies that lead to generation shifts and growing use of demand-side [energy efficiency] and renewable electricity generation out to 2029.'' [116] In this manner, the CPP could directly shape the generation mix of a complying state. It is clear from the FPA that Congress intended the states to have that authority, not the relevant federal agency, FERC. Given that even FERC would not have such authority, the only reasonable inference is that Congress did not intend to give the EPA that authority via CAA section 111.[117] Federal law ''may not be interpreted to reach into areas of state sovereignty unless the language of the federal law compels the intrusion,'' [118] and, as discussed above, basing BSER on generation shifting is not authorized by Congress here. Such an interpretation is also consistent with the cooperative-federalism framework of the CAA.[119] While the EPA has previously asserted that the CPP only provides emissions guidelines, leaving the states with the flexibility to create their own compliance measures,[120] the guidelines are based on actions outside of the EPA's authority to directly or indirectly compel and the practical effect of

[106] *Hughes* v. *Talen Energy Marketing, LLC,* 136 S.Ct. 1288, 1291–92 (2016) (citing 16 U.S.C. 824(b)(1), 824d(a) and 824e(a)).

[107] *Id.* at 1292 (quoting *FERC* v. *Electric Power Supply Assn.,* 136 S.Ct. 760, 766 (2016) (EPSA) (quoting 824(b)). The States' reserved authority includes control over in-state ''facilities used for the generation of electric energy.'' 824(b)(1); see *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation and Development Comm'n,* 461 U.S. 190, 205 (1983) (''Need for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States.'').

[108] 16 U.S.C. 824(a), 824(b)(1); see also *id.* 824*o*(i)(2) (''This section does not authorize . . . [FERC] to order the construction of additional generation or transmission capacity''). There are other jurisdictional limitations under the FPA. For example, publicly-owned and many cooperatively owned utilities are subject to only some elements of the FPA. *Id.* 824(f), 824(b)(2). And entities not operating in interstate commerce, *i.e.,* entities in Alaska, Hawaii, and the Electric Reliability Council of Texas portion of Texas, are also subject to only limited FERC jurisdiction.

[109] *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation and Development Comm'n,* 461 U.S. 190, 205 (1983).

[110] *Id.* at 212.

[111] Dennis, Jeffrey S., et al., Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies, 3 (December 2016), *available at https://www.energy.gov/sites/prod/files/2017/01/f34/Federal%20State%20Jurisdictional%20Split-Implications%20for%20Emerging%20Electricity%20Technologies.pdf; see also* 16 U.S.C. 824*o*(i)(2) (''This section does not authorize . . . [FERC] to order the construction of additional generation or transmission capacity'').

[112] *Hughes,* 136 S. Ct. at 1297–98. *See also* EPSA, 753 F.3d at 221, 224 (''the Federal Power Act unambiguously restricts FERC from regulating the retail market'' and quoting *Altamont Gas Transmission Co.* v. *FERC,* 92 F.3d 1239, 1248 (D.C. Cir. 1996)) (noting that ''FERC cannot 'do indirectly what it could not do directly' '').

[113] CRS, The Federal Power Act (FPA) and Electricity Markets, 9 (March 10, 2017), *available at https://www.everycrsreport.com/files/20170310_R44783_dd3f5c7c0c852b78f3ea62166ac5ebdbd_1586e12.pdf.*

[114] *See* 80 FR 64745 (explaining that ''the BSER also reflects other CO_2 reduction strategies that *encourage* increases in generation from lower- or zero-carbon EGUs'') (emphasis added); *cf.* 42 U.S.C. 7651(b) (providing that one purpose of Title IV (but not the CAA overall) is to encourage the ''use of renewable and clean alternative technologies'').

[115] *See* S.Cal. Edison Co., 71 FERC 61,269 (June 2, 1995); see also *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation and Development Comm'n,* 461 U.S. 190, 205, 212 (1983).

[116] 80 FR 64927.

[117] *See Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159, 172 (2001) (citing *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council,* 485 U.S. 568, 575 (1988)).

[118] *Am. Bar Ass'n* v. *FTC,* 430 F.3d 457 (D.C. Cir. 2005).

[119] *See, e.g.,* 42 U.S.C. 7401(b)(3) and (4), 7402(a) and (b), and 7416.

[120] 80 FR 64762 (''States will have the flexibility to choose from a range of plan approaches and measures, including numerous measures beyond those considered in setting the CO_2 emission performance rates'').

implementing the guidelines is that many of those actions likely must be taken.

(5) Commenters' Attempt To Recharacterize the BSER in the CPP as Applying to Sources By Pointing to ''Reduced Utilization'' Is Unavailing and Clearly Precluded by the CAA

(a) The CPP Rejected ''Reduced Utilization'' as a ''System'' for Purposes of CAA Section 111.

Some commenters claim reduced utilization can be ''applied to'' a source as an ''operational method'' for reducing emissions. In the CPP, however, the EPA was clear that reduced utilization on its own ''does not fit within our historical and current interpretation of the BSER.'' [121] The EPA explained: ''Specifically, reduced generation by itself is about changing the amount of product produced rather than producing the same product with a process that has fewer emissions,'' [122] and the EPA has historically based pollution control on ''methods that allow the same amount of production but with a lower-emitting process.'' [123] In proposing to repeal the CPP, the EPA noted that, ''[w]hereas some emission reduction measures (such as a scrubber) may have an incidental impact on a source's production levels, reduced utilization is directly correlated with a source's output.'' [124] Accordingly, ''predicating a section 111 standard on a source's non-performance would inappropriately inject the Agency into an owner/operator's production decisions.'' [125] The EPA is finalizing our proposal that reduced utilization cannot be considered a ''best system of emission reduction'' under CAA section 111(a)(1) because, as the EPA said in the CPP, the EPA has never identified reduced utilization as the BSER and the EPA interprets CAA section 111 to authorize emission limits based on controls that reduce emissions without restricting production. In addition, because the CPP was not premised on ''reduced utilization''—indeed, the EPA expressly renounced that as a basis for the CPP—commenters' attempt to justify the CPP on that basis is unavailing.

(b) Standards of Performance Cannot Be Based on Reduced Utilization

Even if the CPP could be reframed as employing reduced utilization, it would fail to satisfy statutory criteria.

CAA section 302(*l*) provides that a ''standard of performance'' means ''a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous reduction.'' Previously, the Agency has argued that the definitions in CAA section 111(a)(1) ''are more specific'' and therefore controlling,[126] but, to the extent that section 302(*l*) applies, that definition is met when a standard ''applies continuously in that the source is under a continuous obligation to meet its emission rate . . . .'' [127]

Here, the Agency concludes that CAA section 302(*l*) is relevant to interpreting CAA section 111.[128] Statutes should be construed ''so as to avoid rendering superfluous'' any statutory language: ''a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. . . .'' [129] Under the CAA, only section 111 requires the establishment of ''standards of performance.'' Thus, ignoring the generally applicable definition in CAA section 302(*l*) in interpreting CAA section 111 would read it out of the statute. Nor is this a situation where Congress provided that the provision-specific definition in CAA section 111 was to supplant the general definition in CAA section 302(*l*). First, the opening phrase of CAA section 302 indicates that the section 302 definitions apply ''[w]hen used in this chapter.'' By contrast, the definitions provisions in some statutes begins with text that expressly provides that the general statutory definitions are supplanted by provision-specific definitions. *See, e.g.,* Clean Water Act (CWA) section 502 (33 U.S.C. 1362) (which begins ''Except as otherwise specifically provided . . . .''). Second, one of the CAA section 302 definitions expressly states that it is supplanted by provision-specific definitions.[130]

However, the Agency was wrong to conclude that ''a requirement of continuous emission reduction'' means only that a standard of performance need apply ''on a continuous basis.'' In fact, Congress used such phrasing in the preceding definition under CAA section 302(k). The terms ''emission limitation'' and ''emission standard'' mean ''a requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants *on a continuous basis,* including any requirement relating to the operation or maintenance of a source *to assure continuous emission reduction. . . .*'' [131] Whereas emission limitations and emission standards apply ''on a continuous basis, *including any* requirement . . . to assure continuous emission reduction,'' standards of performance *must* impose a ''requirement of continuous emission reduction.''

When Congress made explicit the requirement for ''continuous emission reduction,'' it was to ''affirm the decisions of four U.S. courts of appeals cases that the [A]ct requires continuous emission reductions to be applied.'' [132] Thus, as scholar David Currie observed,

[121] 80 FR 64780.

[122] *Id.*

[123] 80 FR 64782 n.602.

[124] 83 FR 44752.

[125] *Id.*

[126] *See* Brief of Respondent at 129–30, *New Jersey* v. *EPA,* No. 05–1097 (consolidated) (D.C. Cir. May 4, 2007).

[127] 80 FR 64841. *See also* 70 FR 28617 (''Even if the 302(*l*) definition applied to the term 'standard of performance' as used in section 111(d)(1), [the] EPA believes that a cap-and-trade program meets the definition. . . . That is, there is never a time when sources may emit without needing allowances to cover those emissions.'').

[128] Indeed, the provisions of CAA section 302 are supplanted by provision-specific definitions only to the extent that those specific provisions ''expressly'' do so. *See, e.g., Alabama Power* v. *Costle,* 636 F.2d 323, 370 (D.C. Cir. 1979) (holding that CAA section 169(1) is controlled by the general definition in CAA section 302(j) with respect to the ''rule requirement'' in CAA section 302(j) that is not expressly supplanted by CAA section 169(1)).

[129] *Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004). *Cf.* Brief of Respondent at 129, *New Jersey* v. *EPA* (''[s]pecific terms prevail over the general in the same or another statute which might otherwise be controlling.'' (citation and quotation marks omitted)).

[130] *See* CAA section 302(j) (which defines ''major stationary source'' and ''major emitting facility'' and begins ''Except as otherwise expressly provided, ...'').

[131] 42 U.S.C. 7602(k) (emphasis added). *See* H.R. 6161, Rep. No. 95–294, 92 (May 12, 1977) (''Without an enforceable emission limitation *which will be complied with at all times,* there can be no assurance that ambient standards will be attained and maintained. Any emission limitation under the [CAA], therefore must be *met on a constant basis. . . .*'') (emphasis added).

[132] H.R. Conf. Rep. No. 95–564, 514 (Aug. 3, 1977); see also H.R. No. 95–294, 190 (May 12, 1977) (''To make clear the committee's intent that intermittent or supplemental control measures are not appropriate technological systems for new sources (and to prevent the litigation which has been conducted with respect to use of intermittent or supplemental systems at existing sources), the committee adopted language clearly stating that continuous emission reduction technology would be required to meet the requirements of this section.''); and *id.* at 92 (''By defining the terms 'emission limitation,' 'emmission [sic] standard,' and 'standard of performance,' the committee has made clear that constant or continuous means of reducing emissions must be used to meet these requirements.''). For example, ''The Sixth Circuit has agreed with the Fifth, upholding the EPA's rejection of a provision that would have allowed 'intermittent' controls when necessary to meet ambient standards, adding on the basis of a stray remark of the Supreme Court in *Train* that 'emission standards' were only those limiting the 'composition' of an emission, not restrictions on operation or on the content of fuels.'' David P. Currie, Federal Air-Quality Standards and Their Implementation, 365 American Bar Foundation Research Journal, 376 n.58 (1976).

Congress ''intended to forbid reliance on intermittent control strategies, such as temporary use of low-sulfur fuels *or reductions in plant output* . . . .'' [133] Because standards of performance cannot be based on intermittent control strategies, basing BSER on reduced utilization is statutorily precluded for purposes of CAA section 111.

Finally, basing the BSER on reduced utilization contravenes the plain meaning of a ''standard of performance.'' As the Supreme Court held most recently in *Weyerhaeuser* v. *FWS,* 139 S. Ct. 361 (2018),[134] and previously in *Solid Waste Agency of Northern Cook County,* courts must give statutory terms meaning, even where they are part of a larger statutorily defined phrase.[135] In the phrase ''standard of performance,'' the term ''performance'' is defined as ''[t]he accomplishment, execution, carrying out, . . . [or] doing of any action or work,'' [136] and thus refers to the source's manufacturing or production of product. Reduced utilization does not involve improvements to a source's emissions during ''performance;'' instead it calls for non-performance—the cessation or limitation of manufacturing or production —of a source. Accordingly, reduced utilization cannot form the basis of a ''standard of performance'' under CAA section 111.

The definition of ''standard of performance,'' and the scope of the ''best system of emission reduction'' contained within, confers considerable discretion on the EPA to interpret the statute and make reasonable policy choices pursuant to *Chevron* step two as to what is the best system to reduce emissions of a particular pollutant from a particular type of source. However, by making clear that the ''application'' of the BSER must be to the source, Congress spoke directly in *Chevron* step one terms to the question of whether the BSER may contain measures other than those that can be put into operation at a particular source: It may not. The approach to BSER in the CPP is thus unlawful and the CPP must be repealed.

C. Independence of the Repeal of the Clean Power Plan

Although this action appears in the same document as the ACE rule and the revisions to the emission guidelines implementing regulations, the repeal of the CPP is a distinct final agency action that is not contingent upon the promulgation of ACE or the new implementing regulations. As explained above, Congress spoke directly to the question of whether CAA section 111 authorizes the EPA to issue regulations pursuant to CAA section 111(d) that call for the establishment of standards of performance based on the types of measures that comprised the second and third building blocks of the CPP's BSER permits the Agency's to consider generation-shifting as a potential system of emission reduction in developing emission guidelines. The answer to that question is no.

The CPP described itself as a ''significant step forward in reducing [GHG] emissions in the U.S.'' and relied ''in large part on already clearly emerging growth in clean energy innovation, development and deployment . . . .'' 80 FR 64663. Market-based forces have already led to significant generation shifting in the power sector. However, the fact that those market forces have had that result does not confer authority on the EPA beyond what Congress conferred in the CAA.

The EPA does not deny that, if it were validly within the Agency's authority under the statute, regulations that can only be complied with through widespread implementation of generation shifting might be a workable policy for achieving sector-wide carbon-intensity reduction goals. But what is not legal cannot be workable. The CPP's reliance on generation shifting as the basis of the BSER is simply not within the grant of statutory authority to the Agency. The text of CAA section 111 is clear, leaving no interpretive room on which the EPA could seek deference for the CPP's grid-wide management approach. Accordingly, EPA is obliged to repeal the CPP to avoid acting unlawfully.

Because the EPA exceeded its statutory authority when it promulgated the CPP, the EPA's repeal of that rule will remain valid even if a future reviewing court were to find fault with the separate and distinct legal interpretations and record-based findings underpinning the ACE rule (see Section III) or the new implementing regulations (see Section IV). The EPA today repeals the CPP as a separate action, distinct from its promulgation of the ACE rule and of revisions to its regulations implementing section 111(d). The EPA would repeal the CPP today even if it were not yet prepared to promulgate these other regulations, or indeed if it knew that those other regulations would not survive judicial review.

III. The Affordable Clean Energy Rule

A. The Affordable Clean Energy Rule Background

1. Regulatory Background

In December 2017, the EPA published an Advanced Notice of Proposed Rule Making (ANPRM) to solicit comment on what the Agency should include in CAA section 111(d) emission guidelines, including soliciting comment on the respective roles of the states and the EPA; what systems of emission reduction might be available and appropriate for reducing GHG emissions from existing coal-fired EGUs; and potential flexibilities that could be afforded under the NSR program to improve the implementation of a future rule.[137] The EPA received more than 270,000 comments on the ANPRM.

Informed by the ANPRM, the EPA then published the ACE proposal, which consisted of three distinct actions: (1) Emission guidelines for GHG emissions from existing coal-fired EGUs, based on application of HRI measures as the BSER; (2) new emission guideline implementation regulations; and (3) revisions to the NSR program to facilitate the implementation of efficiency projects at EGUs.[138]

In this final action, the EPA has determined that the BSER for CO_2 emissions from existing coal-fired EGUs is HRI, in the form of a specific set of technologies and operating and maintenance practices that can be applied at and to certain existing coal-fired EGUs, which is consistent with the legal interpretation adopted in the repeal of the CPP (see above section II). Also, in this action, the EPA has provided information for state plan development. The state plan development discussion is consistent with the new implementing regulations for CAA section 111(d) emission guidelines discussed separately in section IV of this preamble.

[133] David P. Currie, Direct Federal Regulation of Stationary Sources Under the Clean Air Act, 128 U. Pa. L. Rev. 1389, 1431 (1980) (emphasis added). Professor Curie also suggests that ''the requirement of continuous controls . . . may even have been implicit in the original section 111.'' *Id.*

[134] 139 S.Ct. at 368–69 (rejecting environmental group's contention that statutory definition of ''critical habitat'' is complete and does not require independent inquiry into meaning of the term ''habitat,'' which the statute left undefined).

[135] 531 U.S. at 172 (requiring that the word ''navigable'' in the Clean Water Act's statutorily defined term ''navigable waters'' be given ''effect'').

[136] The Oxford English Dictionary (2d ed. 1989) (1. The carrying out of a command, duty, purpose, promise, etc.; execution, discharge, fulfilment. 2. a. The accomplishment, execution, carrying out, working out of anything ordered or undertaken; the doing of any action or work; working, action (personal or mechanical'') and American Heritage Dictionary of the English Language (2d ed. 1969) (''1. The act of performing, or the state of being performed.'' [perform 1. To begin and carry through to completion]).

[137] *See* 82 FR 61507 (December 28, 2017).

[138] *See* 83 FR 44746 (August 31, 2018).

As noted above, the EPA also proposed revisions to the NSR program in parallel with the ACE rule and the new implementing regulations. The EPA is not finalizing NSR revisions at this time; instead, the EPA intends to take final action on the proposed revisions at a later date in a separate notification of final action.

2. Public Comment and Hearing on the ACE Proposal

The Administrator signed the ACE proposal on August 21, 2018, and, on the same day, the EPA made this version available to the public at *https://www.epa.gov/stationary-sources-air-pollution/proposal-affordable-clean-energy-ace-rule.* The 60-day public comment period on the proposal began on August 31, 2018, the day of publication in the **Federal Register**. The EPA held a public hearing on October 1, 2018, in Chicago, Illinois, and extended the public comment period until October 31, 2018, to allow for 30 days of public comment following the public hearing. The EPA received nearly 500,000 comments on the ACE proposal.

B. Legal Authority To Regulate EGUs

In the CPP, the EPA stated that the Agency's then-concurrent promulgation of standards of performance under CAA section 111(b) regulating CO_2 emissions from new, modified, and reconstructed EGUs triggered the need to regulate existing sources under CAA section 111(d).[139] In ACE, the EPA is not re-opening any issues related to this conclusion, but for the convenience of stakeholders and the public, the EPA summarizes the explanation provided in the CPP here.

CAA section 111(d)(1) requires the Agency to promulgate regulations under which the states must submit state plans regulating ''any existing source'' of certain pollutants ''to which a standard of performance would apply if such existing source were a new source.'' Under CAA section 111(a)(2) and 40 CFR 60.15(a), a ''new source'' is defined as any stationary source, the construction, modification, or reconstruction of which is commenced after the publication of proposed regulations prescribing a standard of performance under CAA section 111(b) applicable to such source. In the CPP, the EPA noted that, at that time, the Agency was concurrently finalizing a rulemaking under CAA section 111(b) for CO_2 emissions from new sources, which provided the requisite predicate for applicability of CAA section 111(d).[140]

The EPA explained in the CAA section 111(b) rule (80 FR 64529) that ''section 111(b)(1)(A) requires the Administrator to establish a list of source categories to be regulated under section 111. A category of sources is to be included on the list 'if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health and welfare.' '' Then, for the source categories listed under CAA section 111(b)(1)(A), the Administrator promulgates, under CAA section 111(b)(1)(B), ''standards of performance for new sources within such category.'' The EPA further took the position that, because EGUs had previously been listed, it was unnecessary to make an additional finding as a prerequisite for regulating CO_2. The Agency expressed the view that, under CAA section 111(b)(1)(A), findings are category-specific and not pollutant-specific, so a new finding is not needed with regard to a new pollutant. The Agency further asserted that, even if it were required to make a pollutant-specific finding, given the large amount of CO_2 emitted from this source category (the largest single stationary source category of emissions of CO_2 by far) that EGUs would easily meet the standard for making such a listing. The Agency further took the position that, given the large amount of emissions from the source category, it was not necessary in that rule ''for the EPA to decide whether it must identify a specific threshold for the amount of emissions from a source category that constitutes a significant contribution.'' [141]

That CAA section 111(b) rulemaking remains in effect, although the EPA has proposed to revise it.[142] That rule continues to provide the requisite predicate for applicability of CAA section 111(d).

C. Designated Facilities for the Affordable Clean Energy Rule

The EPA is finalizing that a designated facility [143] subject to this regulation is any coal-fired electric utility steam generating unit that: (1) Is not an integrated gasification combined cycle (IGCC) unit (*i.e.,* utility boilers, but not IGCC units); (2) was in operation or had commenced construction on or before January 8, 2014; [144] (3) serves a generator capable of selling greater than 25 megawatts (MW) to a utility power distribution system; and (4) has a base load rating greater than 260 gigajoules per hour (GJ/h) (250 million British thermal units per hour (MMBtu/h)) heat input of coal fuel (either alone or in combination with any other fuel). Consistent with the new implementing regulations, the term ''designated facility'' is used throughout this preamble to refer to the sources affected by these emission guidelines.[145] For this action, consistent with prior CAA section 111 rulemakings concerning EGUs, the term ''designated facility'' refers to a single EGU that is affected by these emission guidelines.

The EPA's applicability criteria for ACE differ from those in the CPP because the EPA's determination of the BSER is only for coal-fired electric utility steam generating units. In the ACE proposal, the EPA did not identify a BSER for IGCC units, oil- or natural gas-fired utility boilers, or fossil fuel-fired stationary combustion turbines and, thus, such units are not designated facilities for purposes of this action. In the ACE proposal (and previously in the ANPRM), the EPA solicited information on the cost and performance of technologies that may be considered as the BSER for fossil fuel-fired stationary combustion turbines and other fossil-fuel fired EGUs. The EPA currently does not have adequate information to determine a BSER for these EGUs and, if appropriate, the EPA will address GHG emissions from these EGUs in a future rulemaking.

A coal-fired EGU for purposes of this rulemaking (and consistent with the definition of such units in the Mercury and Air Toxics Standards (MATS) (77 FR 9304)) is an electric utility steam generating unit that burns coal for more than 10.0 percent of the average annual heat input during the three previous calendar years. Further, for purposes of this rulemaking, the following EGUs will be excluded from a state's plan: (1) Those units subject to 40 CFR part 60, subpart TTTT as a result of commencing

[139] *See* 80 FR 64715.

[140] *Id.*

[141] *See* 80 FR 64531.

[142] *See* 83 FR 65424.

[143] The term ''designated facility'' means ''any existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility.'' *See* 40 CFR 60.21a(b).

[144] Under CAA section 111, the determination of whether a source is a new source or an existing source (and thus potentially a designated facility) is based on the date that the EPA proposes to establish standards of performance for new sources. January 8, 2014, is the date the proposed GHG standards of performance for new fossil fuel-fired EGUs were published in the **Federal Register** (79 FR 1430).

[145] The EPA recognizes, however, that the word ''facility'' is often understood colloquially to refer to a single power plant, which may have one or more EGUs co-located within the plant's boundaries.

a qualifying modification or reconstruction; (2) steam generating units subject to a federally enforceable permit limiting net-electric sales to one-third or less of their potential electric output or 219,000 megawatt-hour (MWh) or less on an annual basis; (3) a stationary combustion turbine that meets the definition of a simple cycle stationary combustion turbine, a combined cycle stationary combustion turbine, or a combined heat and power combustion turbine; (4) an IGCC unit; (5) non-fossil-fuel units (*i.e.,* units capable of combusting at least 50 percent non-fossil fuel) that have historically limited the use of fossil fuels to 10 percent or less of the annual capacity factor or are subject to a federally enforceable permit limiting fossil fuel use to 10 percent or less of the annual capacity factor; (6) units that serve a generator along with other steam generating unit(s) where the effective generation capacity (determined based on a prorated output of the base load rating of each steam generating unit) is 25 MW or less; (7) a municipal waste combustor unit subject to 40 CFR part 60, subpart Eb; (8) commercial or industrial solid waste incineration units that are subject to 40 CFR part 60, subpart CCCC; or (9) a steam generating unit that fires more than 50-percent non-fossil fuels.

D. Regulated Pollutant

The air pollutant regulated in this final action is GHGs. However, the standards in this rule are expressed in the form of limits solely on emissions of CO_2, and not the other constituent gases of the air pollutant GHGs.[146] The EPA is not establishing a limit on aggregate GHGs or separate emission limits for other GHGs (such as methane (CH_4) or nitrous oxide (N_2O)) as other GHGs represent significantly less than one percent of total estimated GHG emissions (as CO_2 equivalent) from fossil fuel-fired electric power generating units.[147] Notwithstanding the form of the standard, consistent with other EPA regulations addressing GHGs, the air pollutant regulated in this rule is GHGs.[148]

E. Determination of the Best System of Emission Reduction

1. Guiding Principles in Determining the BSER

CAA section 111(d)(1) directs the EPA to promulgate regulations establishing a procedure similar to that under CAA section 110,[149] under which states submit state plans that establish ''standards of performance'' for emissions of certain air pollutants from existing sources which, if they were new sources, would be subject to new source standards under CAA section 111(b), and that provide for the implementation and enforcement of those standards of performance. Because CAA section 111(a)(1) defines ''standard of performance'' for purposes of all of section 111, and because federal standards for new sources established under section 111(b) and standards for existing sources established by a state plan under section 111(d) are both ''standards of performance,'' it is the EPA's responsibility to determine the BSER for designated facilities for standards developed under both CAA section 111(b) for new sources and section 111(d) for existing sources.[150] In making this determination, the EPA identifies all ''adequately demonstrated'' ''system[s] of emission reduction'' for a particular source category and then evaluates those systems to determine which is the ''best,'' [151] while ''taking into account'' the factors of ''cost . . . non-air quality health and environmental impact and energy requirements.'' [152] Because CAA section 111 does not set forth the weight that should be assigned to each of these factors, courts have granted the Agency a great degree of discretion in balancing them.[153]

The CAA limits ''standards of performance'' to systems that can be applied at and to a stationary source (*i.e.,* as opposed to off-site measures that are implemented by an owner or operator, such as subsidizing lower-emitting sources) and that lead to continuous emission reductions (*i.e.,* are not intermittent control techniques). Such systems include add-on controls and lower-emitting processes/practices/designs that can be applied to a designated facility, *i.e.,* a building, structure, facility, or installation regulated under CAA section 111.[154] As discussed in section II of this preamble, this is the only permissible interpretation of the scope of the EPA's authority under CAA section 111. But this clear outer bound on the EPA's authority leaves the Agency considerable room for interpretation and policy choice within that scope in determining the BSER that has been adequately demonstrated to address a particular source category's emission of a given pollutant. Case law under CAA section 111(b) explains that ''[a]n adequately demonstrated system is one which has been shown to be reasonably reliable, reasonably efficient, and which can reasonably be expected to serve the interests of pollution control without becoming exorbitantly costly in an economic or environmental way.'' [155] While some of these cases suggest that ''[t]he Administrator may make a projection based on existing technology,'' [156] the D.C. Circuit has also

[146] In the 2009 Endangerment Finding for mobile sources, the EPA defined the relevant ''air pollution'' as the atmospheric mix of six long-lived and directly emitted greenhouse gases: Carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). *See* 74 FR 66497. Additionally, note that the new CAA section 111(d) implementing regulations at 40 CFR 60.22a(b)(1) do not change the requirement of the previous implementing regulations, 40 CFR 60.22(b)(1) that emission guidelines provide information concerning known or suspected endangerment of public health or welfare caused, or contributed to, by the designated pollutant. For this emission guideline, that information is contained in the 2009 Endangerment Finding.

[147] EPA Greenhouse Gas Reporting Program; *www.epa.gov/ghgreporting/.*

[148] *See, e.g.,* 79 FR 34960.

[149] CAA section 110 governs state implementation plans, or SIPs, which states develop and submit for EPA approval and which are used to ensure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for criteria pollutants.

[150] *See also* 40 CFR 60.22a. However, while the BSER underlying both new- and existing-source performance standards is determined by the EPA, the performance standards for new sources are directly established by the EPA under section 111(b), whereas states establish performance standards (applying the BSER) for existing sources in their jurisdiction in their state plans under section 111(d), and Congress has expressly required that EPA permit states, in establishing performance standards for existing sources, to take into account the remaining useful life of the source and other source-specific factors. *See* 42 U.S.C. 7411(d)(1).

[151] The D.C. Circuit recognizes that the EPA's evaluation of the ''best'' system must also include ''the amount of air pollution as a relevant factor to be weighed . . . .'' *Sierra Club* v. *Costle,* 657 F.2d 298, 326 (D.C. Cir. 1981). Additionally, a system cannot be ''best'' if it does more harm than good due to cross-media environmental impacts. *See Portland Cement,* 486 F. 2d at 384; *Sierra Club,* 657 F.2d at 331; *see also Essex Chemical Corp.,* 486 F.2d 427, 439 (D.C. Cir. 1973) (remanding standard to consider solid waste disposal implications of the BSER determination). Nevertheless, CAA section 111 does not require the ''greatest degree of emission control'' or ''mandate that the EPA set standards at the maximum degree of pollution control technologically achievable.'' *Sierra Club,* 657 F.2d at 330.

[152] The EPA may consider energy requirements on both a source-specific basis and a sector-wide, region-wide or nationwide basis. Considered on a source-specific basis, ''energy requirements'' entail, for example, the impact, if any, of the system of emission reduction on the source's own energy needs. As discussed in this document, a consideration of ''energy requirements'' informs the EPA's judgment that repowering and refueling coal-fired facilities to be fueled by natural gas is not appropriate for consideration as BSER here.

[153] *Lignite Energy,* 198 F.3d 930, 933 (D.C. Cir. 1999).

[154] *See* section 111(a)(3) for definition of ''stationary source.''

[155] *Essex Chemical Corp.,* 486 F.2d 375, 433–34 (D.C. Cir. 1973).

[156] *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 391 (D.C. Cir. 1973).

noted that ''there is inherent tension'' between considering a particular control technique as both ''an emerging technology and an adequately demonstrated technology.'' [157] Nevertheless, the EPA appears to ''have authority to hold the industry to a standard of improved design and operational advances, so long as there is substantial evidence that such improvements are feasible.'' [158] The essential question, therefore, is whether the BSER is ''available.'' [159]

In considering the availability of different systems of emission reduction, the ''EPA must examine the effects of technology on the grand scale,'' because CAA section 111 standards are, after all, ''a national standard with long-term effects.'' [160] To that end, the Agency must ''consider the representativeness for the industry as a whole of the tested plants on which it relies. . . .'' [161] A CAA section 111 standard, therefore, ''cannot be based on a 'crystal ball' inquiry.'' [162]

Whereas the EPA establishes performance standards for new sources under CAA section 111(b), section 111(d) provides *that states* are primarily responsible for regulating existing sources. This bifurcated approach dovetails with testimony offered during development of the CAA Amendments of 1970 (which established the section 111 program)—specifically, Secretary Finch explained that ''existing stationary sources of air pollution are so numerous and diverse that the problems they pose can most efficiently be attacked by state and local agencies.'' [163] Indeed, Congress eventually made explicit the requirement that the EPA allow states to take into account the ''remaining useful life'' of an existing source, ''among other factors,'' when applying a standard of performance to any particular source.[164] Accordingly, the Agency's identification of the BSER is based on what is ''adequately demonstrated'' and broadly achievable for a source category across the country, while each state—which will be more familiar with the operational and design characteristics of actually existing sources within their borders—is responsible for developing source-specific standards reflecting application of the BSER.[165] Indeed, Congress has expressly provided that the EPA must permit states to take into consideration a source's remaining useful life, among other factors, when applying a standard of performance to a particular source.[166]

In the ACE proposal, the EPA provided a discussion of the identified systems of emission reduction and explained why certain systems were eliminated from consideration at a preliminary state or were otherwise determined not to be the ''best system.'' The EPA received public comments that challenged or refuted the Agency's evaluation of these systems of emission reduction. A discussion of those reduction measures and a summary of significant public comments are provided below.

The EPA proposed that ''heat rate improvement'' (HRI, which may also be referred to as ''efficiency improvement'') is the BSER for existing coal-fired EGUs. In this action, after consideration of public comments, the EPA is finalizing its proposed determination that HRI is the BSER. The basis for the final determination and a summary of significant public comments received on the proposed determination are discussed below.

2. Heat Rate Improvement Is the BSER for Existing Coal-Fired EGUs

a. Background and BSER Determination

Heat rate is a measure of efficiency that is commonly used in the power sector. The heat rate is the amount of energy or fuel heat input (typically measured in British thermal units, Btu) required to generate a unit of electricity (typically measured in kilowatt-hours, kWh). The lower an EGU's heat rate, the more efficiently it converts heat input to electrical output. As a result, an EGU with a lower heat rate consumes less fuel per kWh of electricity generated and, as a result, emits lower amounts of CO_2—and other air pollutants—per kWh generated (as compared to a less efficient unit with a higher heat rate). Heat rate data from existing coal-fired EGUs indicate that there is potential for improvement across the source category.

Heat rate improvement measures can be applied—and some measures have already been applied—to all existing EGUs (supporting the Agency's determination that HRI measures are the BSER). However, the U.S. fleet of existing coal-fired EGUs is a diverse group of units with unique individual characteristics that are spread across the country.[167] As a result, heat rates of existing coal-fired EGUs in the U.S. vary substantially. Thus, even though the variation in heat rates among EGUs with similar design characteristics, as well as year-to-year variation in heat rate at individual EGUs, indicate that there is potential for HRI that can improve CO_2 emission performance across the existing coal-fired EGU fleet, this potential may vary considerably at the unit level—including because particular units may not be able to employ certain HRI measures, or may have already done so. Accordingly, the EPA identified several available technologies and equipment upgrades, as well as best operating and maintenance practices, that EGU owners or operators may apply to improve an individual EGU's heat rate. The EPA referred to these HRI technologies and techniques as ''candidate technologies'' and solicited comment on their technical feasibility, applicability, performance, and cost.

The EPA received numerous public comments, both supporting and opposing, the proposed determination that HRI is the BSER. Many commenters supported the proposed concept of a unit-specific, state-led evaluation of HRI potential as a means of establishing a unit-specific standard of performance. The commenters argued that it is not possible to adopt uniform, nationally applicable standards of performance based on implementation of particular HRI technologies because each individual unit is subject to a unique combination of factors that can affect the unit's heat rate and HRI potential, many of which are geographically driven and outside the control of a

[157] *Sierra Club* v. *Costle,* 657 F.2d 298, 341 n.157 (D.C. Cir.1981); see also *NRDC* v. *Thomas,* 805 F.2d 410, n.30 (D.C. Cir. 1986) (suggesting that ''a standard cannot both require adequately demonstrated technology and also be technology-forcing'').

[158] *Sierra Club,* 657 F.2d at 364. It is not clear whether these cases would have applied the same technology-forcing philosophy to the regulation of existing sources, as at least one case noted that section 111 ''looks toward what may fairly be projected for the regulated future, rather than the state of the art at present, since it is addressed to standards for *new* plants—old stationary source pollution being controlled through other regulatory authority.'' *Portland Cement,* 486 F.2d at 391 (emphasis added).

[159] *See Portland Cement* v. *Ruckelshaus,* 486 F.2d at 391.

[160] *Id.* at 330.

[161] *Nat'l Lime Ass'n* v. *EPA,* 627 F.2d 416, 432–33 (D.C. Cir. 1980).

[162] *Essex Chemical Corp.,* 486 F.2d at 391.

[163] Testimony of Robert Finch, Secretary of Health, Education, and Welfare (which regulated air pollution prior to the establishment of the EPA) in support of S. 3466/H.R. 15848, before the House Subcommittee on Public Health and Welfare, H. Hearing (May 16, 1970), 1970 CAA Legis. Hist. at 1369.

[164] 42 U.S.C. 7411(d)(1).

[165] This approach is analogous to the NAAQS program: Where ''[e]ven with air quality standards being set nationally . . . the steps needed to deal with existing stationary sources would necessarily vary from one State to another and, within States, from one area to another . . . .'' *Id.*

[166] 42 U.S.C. 7411(d)(1).

[167] For example, the current fleet of existing fossil fuel-fired EGUs is quite diverse in terms of size, age, fuel type, operation (*e.g.,* baseload, cycling), boiler type, *etc.* Moreover, geography and elevation, unit size, coal type, pollution controls, cooling system, firing method, and utilization rate are just a few of the parameters that can impact the overall efficiency and performance of individual units.

source. The EPA agrees with these commenters. As previously mentioned, the U.S. fleet of existing coal-fired EGUs is diverse in terms of size, vintage, fuel usage, design, geographic location, *etc.* The HRI potential for each unit will be influenced by source-specific factors such as the EGU's past and projected utilization rate, maintenance history, and remaining useful life (among other factors). Therefore, standards of performance must be established from a unit-level evaluation of the application of the BSER and consideration of other factors at the unit level. States are in the best position to make those evaluations and to consider of other unit-specific factors, and indeed CAA section 111(d)(1) directs EPA to permit states to take such factors into consideration as they develop plans to establish performance standards for existing sources within their jurisdiction.

Other commenters opposed the proposed use of unit-specific HRI plans because the commenters believe that this interpretation is inconsistent with the legislative history and that this approach does not enable significant emissions reductions. Some commenters said that defining BSER in terms of operational efficiency (heat rate) is not consistent with the understanding reflected in the EPA's historic practice in all previous CAA section 111(d) rules, where the BSER was determined based on a specific emission reduction technology. The EPA disagrees with the contention. The EPA proposed that HRI through the application of a specific set of emission reduction technologies (discussed in more detail below) and operational practices is the BSER. That approach is consistent with the direction given in the statute. It is also an approach that recognizes the challenges of applying a single specific emission reduction technology within such a diverse population of designated facilities.

After consideration of public comment, the EPA affirms its determination that, as proposed, HRI is the BSER for existing coal-fired EGUs.

b. The List of Candidate Technologies

While a large number of HRI measures have been identified in a variety of studies conducted by government agencies and outside groups,[168] some of those identified technologies have limited applicability and many provide only negligible HRI. The EPA stated in the proposal that it believed that requiring a state in developing its plan to evaluate the applicability to each of its sources of the entire list of potential HRI options—including those with limited applicability and with negligible benefits—would be overly burdensome to the states. Therefore, the EPA identified and proposed a list of the ''most impactful'' HRI technologies, equipment upgrades, and best operating and maintenance practices that form the list of ''candidate technologies'' constituting the BSER. The candidate technologies of the BSER are listed in Table 1 below. Those technologies, equipment upgrades, and best operating and maintenance practices were deemed to be ''most impactful'' because they can be applied broadly and are expected to provide significant HRI without limitations due to geography, fuel type, *etc.* The EPA solicited comment on each of the proposed candidate technologies and on whether any additional technologies should be added to the list, and on whether there is additional information that the EPA should be aware of and consider in determining the BSER and establishing the candidate technologies for HRI measures.

The EPA received numerous public comments on the list of candidate technologies. Some commenters stated that there are additional available HRI technologies that should be added to the list of candidate technologies, while many other commenters agreed that the proposed list of ''candidate technologies'' is reasonable and should be considered the core group for states to evaluate in establishing standards of performance. Commenters agreed that the proposed list of ''candidate technologies'' focuses the states' standard-setting process on those HRI measures with the greatest ability to impact CO_2 emissions. Commenters further stated that the EPA's proposed candidate technology list will limit the burden on states by eliminating the need to consider measures that would almost certainly be rejected due to negligible emission reduction benefits, disproportionate costs, or availability. However, commenters also noted that there may be additional HRI opportunities available to a significant number of designated facilities and that states should not be required to limit their evaluations to just the ''candidate technologies'' in establishing unit-specific standards of performance. Some commenters suggested that the EPA establish a process whereby HRI solutions can be added to the list of ''candidate technologies.''

Commenters also stated that some of the equipment upgrades and operating practices proposed as candidate technologies have the potential to improve an EGU's *net* heat rate by reducing auxiliary load but would have no impact on the unit's *gross* heat rate.[169] Comments regarding gross versus net heat rate, and gross- versus net-based standards of performance, are discussed in more detail below in section III.F.1.c of this preamble.

The EPA considered the public comments on the BSER technologies and believes that the proposed list still represents the most broadly applicable and impactful collection of HRI measures. Therefore, the EPA is, in this action, finalizing the proposed technologies, equipment upgrades, and best operating and maintenance practices provided in Table 1 of the proposal [170] as the final list of ''candidate technologies'' whose applicability to each designated facility within their boundaries states must evaluate in establishing a standard of performance for that source in their state plans under CAA section 111(d).

The technologies and operating and maintenance practices listed and described below are generally available and appropriate for all types of EGUs. However, some existing EGUs will have already implemented some of the listed HRI technologies, equipment upgrades, and operating and maintenances practices. There will also be unit-specific physical or cost considerations that will limit or prevent full implementation of the listed HRI technologies and equipment upgrades. States will consider these and other factors when establishing unit-level standards of performance. The final list of ''candidate technologies''—with the range of expected percent HRI—is provided below in Table 1.

[168] *See* Table 3 in ANPRM, 82 FR 61515.

[169] The *gross heat rate* is the fuel heat input required to generate a unit of electricity (typically presented in Btu/kWh-gross). The *net heat rate* is the fuel heat input required to generate a unit of electricity minus the electricity that is used to power facility auxiliary equipment (typically presented in Btu/kWh-net).

[170] *See* 83 FR 44757.

TABLE 1—SUMMARY OF MOST IMPACTFUL HRI MEASURES AND RANGE OF THEIR HRI POTENTIAL (%) BY EGU SIZE

HRI Measure	<200 MW		200–500 MW		>500 MW	
	Min	Max	Min	Max	Min	Max
Neural Network/Intelligent Sootblowers	0.5	1.4	0.3	1.0	0.3	0.9
Boiler Feed Pumps	0.2	0.5	0.2	0.5	0.2	0.5
Air Heater & Duct Leakage Control	0.1	0.4	0.1	0.4	0.1	0.4
Variable Frequency Drives	0.2	0.9	0.2	1.0	0.2	1.0
Blade Path Upgrade (Steam Turbine)	0.9	2.7	1.0	2.9	1.0	2.9
Redesign/Replace Economizer	0.5	0.9	0.5	1.0	0.5	1.0
Improved Operating and Maintenance (O&M) Practices	Can range from 0 to >2.0% depending on the unit's historical O&M practices.					

Two of the technologies shown in Table 1—''Blade Path Upgrade (Steam Turbine)'' and ''Redesign/Replace Economizer''—are candidate technologies that are expected to offer some of the largest improvements in unit-level heat rate. However, based on public comments from the ANPRM and the ACE proposal, those also are HRI technologies that have the most potential to trigger NSR requirements. Industrial stakeholders and commenters have indicated, if such HRI trigger NSR, the resulting requirements for analysis, permitting, and capital investments will greatly increase the cost of implementing those HRI technologies and, in the absence of NSR reforms, states will be more likely to determine that those technologies are not cost-effective when analyzing ''other factors'' in determining a standard of performance for an individual facility.

For the ACE proposal, the EPA reflected this in assumptions made in the power sector modeling, using the Integrated Planning Model (IPM), to assess potential costs and benefits of the proposed rule. In that modeling, the EPA assumed two different levels of potential HRI (in percentage terms)—a lower expected HRI without NSR reform and a higher expected HRI with NSR reform.[171]

As mentioned earlier in this preamble, the EPA is not taking final action on the proposed NSR reforms in this final rulemaking action; the EPA intends to take final action on that proposal in a separate final action at a later date. Without finalization of NSR reforms, the EPA anticipates that states in some instances may determine, when considering other factors, that the candidate technologies, ''Blade Path Upgrade (Steam Turbine)'' and ''Redesign/Replace Economizer,'' are less appropriate for application to a particular source or sources than the EPA anticipated would be when it proposed the ACE Rule. Nevertheless, the EPA is retaining these two candidate technologies as part of the final BSER, because it still expects these technologies to be generally applicable across the fleet of existing EGUs, and because the costs of the technologies themselves are generally economical and reasonable.

c. Level of Stringency Associated With the BSER

As discussed in section III.B above, the EPA has the authority and responsibility to determine the BSER. CAA section 111(d)(1), meanwhile, clearly assigns states the role of developing a plan that establishes standards of performance for designated facilities (with EPA's authority to promulgate a federal plan serving as a backstop in the event that a state fails to develop a satisfactory plan[172]). Based on these statutory divisions of roles and responsibilities, the EPA proposed to determine the BSER as HRI achievable through implementation of certain technologies, equipment upgrades, and improved O&M practices. The EPA also declined to propose a standard of performance that presumptively reflects application of the BSER because the establishment of standards of performance for existing sources is the states' role.[173] While declining to provide a presumptive standard, the EPA also proposed to provide *information* on the degree of emission limitation achievable through application of the BSER by providing a range of reductions and costs associated with each of the candidate technologies identified as part of the BSER.[174]

The EPA received numerous comments from states and industry requesting that the EPA provide a presumptive standard, or at minimum, additional guidance and clarity on how states could derive a standard of performance that meets the requirements of this regulation. Additionally, several commenters contended that under CAA section 111(a)(1), the EPA is legally obligated to identify ''the degree of emission limitation achievable through the application of the [BSER]'' (*i.e.,* a level of stringency) because such degree of emission limitation is inextricably linked with the determination of the BSER, which is the EPA's statutory role and responsibility. Upon consideration of these comments, especially the widespread request for more guidance from the EPA on developing appropriate standards of performance, the EPA agrees that it has a responsibility under the CAA to identify the degree of emission reduction that it determines to be achievable through the application of the BSER.

While the CAA provides that the responsibility to establish standards of performance is a state's responsibility, the EPA is identifying the degree of emission limitation achievable through the application of the BSER (*i.e.,* the level of stringency) associated with the candidate technologies. By providing the level of emissions reductions achievable using the candidate technologies the EPA is fulfilling its responsibility as part of the BSER determination. In this instance, the EPA has identified the degree of emission limitation achievable through application of the BSER by providing ranges of expected reductions associated with each of the technologies. These ranges are provided in Table 1, clearly presenting the percentage improvement ranges that can be expected when each candidate technology comprising the BSER is applied to a designated facility. Defining the ranges of HRI as the degree of emission limitation achievable through application of the BSER is consistent with the EPA's position at proposal, where EPA noted that ''while the HRI potential range is provided as guidance for the states, the actual HRI performance for each of the candidate technologies will be unit-specific and

[171] *See* 80 FR 44783.

[172] *See* section 111(d)(2).

[173] *See* 83 FR 44764.

[174] *See* 83 FR 44757, Table 1.

will depend upon a range of unit-specific factors. The states will use the information provided by the EPA as guidance but will be expected to conduct unit-specific evaluations of HRI potential, technical feasibility, and applicability for each of the BSER candidate technologies.'' [175] For purposes of the final ACE rule, states will utilize the ranges of HRI the EPA has provided in developing standards of performance but may ultimately establish standards of performance for one or more existing sources within their jurisdiction that reflect a value of HRI that falls outside of these ranges. See section III.F.1.a of this preamble.

It is reasonable for the EPA to express the ''degree of emission limitation achievable through application of the BSER'' as a set of ranges of values, rather than a single number, that reflects application of the candidate technologies as a whole. This approach is reasonable in light of the nature of what the EPA has identified as the adequately demonstrated BSER (as well as of the structure of section 111 in general and the interplay between section 111(a)(1) and section 111(d) in particular): A suite of candidate technologies that the EPA anticipates will be generally applicable to EGUs at the fleet-wide level but not all of which may be applicable or warranted at the level of a particular facility due to source-specific factors such as the site-specific operational and maintenance history, the design and configuration, the expected operating plans, *etc.* Because of the importance for applicability of the BSER of these source-specific factors, and because the application and installation of the candidate technologies will result in varying degrees of reductions based on application of each of the BSER technologies into the existing infrastructure of the EGU, the EPA has provided ranges of HRI associated with each technology. This accounts for some of the variation that is expected among the designated facilities (*see* section III.F.1.a.(1) of this preamble for discussion of variable emission performance at and between designated facilities). While these ranges represent the degree of emission reduction achievable through application of the BSER, a particular designated facility may have the potential for more or less HRI as a result of the application of the candidate technology based on source-specific characteristics. As further discussed in section III.F. of this preamble, the level of stringency associated with each candidate technology is to be used by states in the process of establishing a standard of performance, and in this process, states may also consider source-specific factors such as variability that may result in a different level of stringency.[176]

d. Detail on the HRI Technologies & Techniques

(1) Neural Network/Intelligent Sootblower

Neural networks. Computer models, known as neural networks, can be used to simulate the performance of the power plant at various operating loads. Typically, the neural network system ties into the plant's distributed control system for data input (process monitoring) and process control. The system uses plant specific modeling and control modules to optimize the unit's operation and minimize the emissions. This model predictive control can be particularly effective at improving the plant's performance and minimizing emissions during periods of rapid load changes—conditions that commenters claimed to be more prevalent now than was the case 5 to 10 years ago. The neural network can be used to optimize combustion conditions, steam temperatures, and air pollution control equipment.

Intelligent Sootblowers. During operations at a coal-fired power plant, particulate matter (PM) (ash or soot) builds up on heat transfer surfaces. This build-up degrades the performance of the heat transfer equipment and negatively affects the efficiency of the plant. Power plant operators use steam injection ''sootblowers'' to clean the heat transfer surfaces by removing the ash build-up. This is often done on a routine basis or as needed based on monitored operating characteristics. Intelligent sootblowers (ISB) are automated systems that use process measurements to monitor the heat transfer performance and strategically allocate steam to specific areas to remove ash buildup.

The cost to implement an ISB system is relatively inexpensive if the necessary hardware is already installed. The ISB software/control system is often incorporated into the neural network software package mentioned above. As such, the HRIs obtained via installation of neural network and ISB systems are not necessarily cumulative.

The efficiency improvements from installation of ISB are often greatest for EGUs firing subbituminous coal and lignite due to more significant and rapid fouling at those units as compared to EGUs firing bituminous coal.

Commenters recommended that the EPA disaggregate its analysis of neural networks and ISB because these technologies do not have to be deployed together and implementing one without the other may be appropriate in many cases. The EPA agrees that the technologies do not have to be implemented together and states must evaluate the applicability and effectiveness of both technologies. The technologies were listed together to emphasize that they are often implemented together and that the resulting HRIs from each are not necessarily additive.

(2) Boiler Feed Pumps

A boiler feed pump (or boiler feedwater pump) is a device used to pump feedwater into a boiler. The water may be either freshly supplied or returning condensate produced from condensing steam produced by the boiler. The boiler feed pumps consume a large fraction of the auxiliary power used internally within a power plant. For example, boiler feed pumps can require power in excess of 10 MW on a 500–MW power plant. Therefore, the maintenance on these pumps should be rigorous to ensure both reliability and high-efficiency operation. Boiler feed pumps wear over time and subsequently operate below the original design efficiency. The most pragmatic remedy is to rebuild a boiler feed pump in an overhaul or upgrade.

Commenters stated that because upgrading an electric boiler feed pump impacts only *net* heat rate (and not *gross* heat rate), it should be excluded from the candidate technologies list. The EPA disagrees that candidate technologies affecting only the *net* heat rate should be removed from the candidate technologies list. These technologies improve the efficiency and reduce emissions from the plant by reducing the auxiliary power load, allowing for more of the produced power to be placed on the grid. As is discussed below in section III.F.1.c., the state will determine whether to establish standards of performance as *gross* output-based standards or as *net* output-based standards. If states establish *gross* output-based standards, it will be up to the states to determine how to account for emission reductions that are attributable to technologies affecting only the *net* output.

[175] *See* 83 FR 44763.

[176] As described later in the preamble in section III.F., the EPA envisions states will develop standards of performance for designated facilities in a two -step process where states first apply the BSER and then consider source-specific factors such as remaining useful life.

(3) Air Heater and Duct Leakage Control

The air pre-heater is a device that recovers heat from the flue gas for use in pre-heating the incoming combustion air (and potentially for other uses such as coal drying). Properly operating air pre-heaters play a significant role in the overall efficiency of a coal-fired EGU. The air pre-heater may be regenerative (rotary) or recuperative (tubular or plate). A major difficulty associated with the use of regenerative air pre-heaters is air in-leakage from the combustion air side to the flue gas side. Air in-leakage affects boiler efficiency due to lost heat recovery and affects the axillary load since any in-leakage requires additional fan capacity. The amount of air leaking past the seals tends to increase as the unit ages. Improvements to seals on regenerative air pre-heaters have enabled the reduction of air in-leakage.

The EPA received comments that claimed the applicability of air pre-heater seals is limited, and that low-leakage seals are not feasible on certain units while other commenters agreed that the HRI estimates for leakage reduction are reasonable, and HRI improvement from 0.25 to 1.0 percent is achievable. The EPA agrees that the HRI estimates for air heater and duct in-leakage are reasonable. The EPA agrees that low-leakage seals are not feasible for certain units (*e.g.,* those using recuperative air heaters). However, the EPA is finalizing a determination that this candidate technology is an element of the BSER because limiting air in-leakage in the air heater and associated duct work can be evaluated on all units and limiting the amount of air in-leakage will improve the efficiency of the unit.

(4) Variable Frequency Drives (VFDs)

VFD on induced draft (ID) fans. The increased pressure required to maintain proper flue gas flow through downstream air pollutant control equipment may require additional fan power, which can be achieved by an ID fan upgrade/replacement or an added booster fan. Generally, older power plant facilities were designed and built with centrifugal fans.

The most precise and energy-efficient method of flue gas flow control is the use of VFD. The VFD controls fan speed electrically by using a static controllable rectifier (thyristor) to control frequency and voltage and, thereby, the fan speed. The VFD enables very precise and accurate speed control with an almost instantaneous response to control signals. The VFD controller enables highly efficient fan performance at almost all percentages of flow turndown.

Due to current electricity market conditions, many units no longer operate at base-load capacity and, therefore, VFDs, also known as variable-speed drives on fans can greatly enhance plant performance at off-peak loads. Additionally, units with oversized fans can benefit from VFD controls. Under these scenarios, VFDs can significantly improve the unit heat rate. VFDs as motor controllers offer many substantial improvements to electric motor power requirements. The drives provide benefits such as soft starts, which reduce initial electrical load, excessive torque, and subsequent equipment wear during startups; provide precise speed control; and enable high-efficiency operation of motors at less than the maximum efficiency point. During load turndown, plant auxiliary power could be reduced by 30–60 percent if all large motors in a plant were efficiently controlled by VFD. With unit loads varying throughout the year, the benefits of using VFDs on large-size equipment, such as FD or ID fans, boiler feedwater and condenser circulation water pumps, can have significant impacts. There are circumstances in which the HRI has been estimated to be much higher than that shown in Table 1, depending on the operation of the unit. Cycling units realize the greatest gains representative of the upper range of HRI, whereas units which were designed with excess fan capacity will exhibit the lower range.

VFD on boiler feed pumps. VFDs can also be used on boiler feed water pumps as mentioned previously. Generally, if a unit with an older steam turbine is rated below 350 MW, the use of motor-driven boiler feedwater pumps as the main drivers may be considered practical from an efficiency standpoint. If a unit cycles frequently then operation of the pumps with VFDs will offer the best results on heat rate reductions, followed by fluid couplings. The use of VFDs for boiler feed pumps is becoming more common in the industry for larger units. And with the advancements in low pressure steam turbines, a motor-driven feed pump can improve the thermal performance of a system up to the 600–MW range, as compared to the performance associated with the use of turbine drive pumps.

Some commenters stated that VFDs should be excluded from the candidate technologies list because the efficiency improvements are likely near zero when the EGU operates as a baseload unit. Commenters further stated that VFD installation may not be reasonable because of their high cost, large physical size, and significant cooling requirements. The EPA agrees that VFD HRIs will be less effective for units that operate consistently at high capacity factors at base load conditions. However, due to the changing nature of the power sector (increased use of natural gas-fired generating sources, more intermittent renewable generating sources, *etc.*), many coal-fired EGUs are cycling more often and the heat rate of such units will benefit from installation of VFD technology. In evaluating the applicability of the BSER technologies, states will consider ''other factors'' that will include expected utilization rate, remaining useful life, physical/space limitations, *etc.* That evaluation of ''other factors'' will identify whether implementation of a BSER candidate technology is reasonable. The EPA is finalizing a determination that this candidate technology is an element of the BSER because it contributes to emission reductions and it is broadly applicable at reasonable cost.

Commenters also stated that VFDs only impact *net* heat rate, so efficiency improvements may not be cost-effective. As stated earlier, if the states choose to establish *gross* output-based standards of performance, it will be up to the states to determine how to account for emission reductions attributable to improvement to *net* heat rate.

(5) Blade Path Upgrade (Steam Turbine)

Upgrades or overhauls of steam turbines offer the greatest opportunity for HRI on many units. Significant increases in performance can be gained from turbine upgrades when plants experience problems such as steam leakages or blade erosion. The typical turbine upgrade depends on the history of the turbine itself and its overall performance. The upgrade can entail myriad improvements, all of which affect the performance and associated costs. The availability of advanced design tools, such as computational fluid dynamics (CFD), coupled with improved materials of construction and machining and fabrication capabilities have significantly enhanced the efficiency of modern turbines. These improvements in new turbines can also be utilized to improve the efficiency of older steam turbines whose efficiency has degraded over time.

Commenters stated that steam turbine blade path upgrades may not be achievable for every turbine because of the potentially significant variability in an individual turbine's parameters when considering costs. Commenters further noted that these are large investments that can require lengthly outages and long lead times.

Other commenters noted that these steam turbine blade path upgrades have been commercially available for over 10 years and that the HRI estimates in Table 1 appear reasonable.

The EPA agrees that steam turbine blade path upgrades are commercially available and that the HRI estimates in Table 1 appear to be consistent with other estimates of HRI achievable from this type of upgrade. As mentioned earlier, based on public comments responding to the ANPRM and the ACE proposal, this HRI measure has the potential to trigger NSR requirements (in the absence of NSR program reforms), and the EPA anticipates that, among the candidate technologies identified as comprising the BSER, states may be relatively more likely to determine in light of the resulting requirements for analysis, permitting, and capital investments that this candidate technology is not economically feasible when evaluating it in the process of establishing standards of performance for particular existing sources within their jurisdiction. Nevertheless, the EPA is finalizing a determination that steam turbine blade bath upgrades are part of the BSER because the EPA anticipates they will still be generally available and feasible at a sufficient scale among the nationwide fleet.

(6) Redesign/Replace Economizer

In steam power plants, economizers are heat exchange devices used to capture waste heat from boiler flue gas which is then used to heat the boiler feedwater. This use of waste heat reduces the need to use extracted energy from the system and, therefore, improves the overall efficiency or heat rate of the unit. As with most other heat transfer devices, the performance of the economizer will degrade with time and use, and power plant representatives contend that economizer replacements are often delayed or avoided due to concerns about triggering NSR requirements. In some cases, economizer replacement projects have been undertaken concurrently with retrofit installation of selective catalytic reduction (SCR) systems because the entrance temperature for the SCR unit must be controlled to a specific range.

Commenters stated that redesigning or replacing an economizer may be limited for some units by the need to maintain appropriate temperatures at a downstream SCR system for nitrous oxides (NOx) control. Commenters also stated that applicability of this measure will be site-specific because boiler layout and construction varies widely between units. Commenters stated that the values in Table 1 appear to reflect a major economizer redesign which may not be possible for many units. The EPA agrees that there will likely be site-specific factors that must be considered to determine whether economizer redesign/replacement is a feasible HRI option (as is the case for all the BSER candidate technologies). Nevertheless, the EPA is finalizing a determination that economizer upgrades (or replacement) are part of the BSER because the EPA anticipates they will still be generally available and feasible at a sufficient scale among the nationwide fleet. As mentioned earlier, states may take into consideration site-specific characteristics (''other factors'') when establishing a standard of performance for each unit.

(7) HRI Techniques—Best Operating and Maintenance Practices

Many unit operators can achieve additional HRI by adopting best O&M practices. The amount of achievable HRI will vary significantly from unit to unit, ranging from no improvement to potentially more than 2.0 percent depending on the unit's historical O&M practices. In setting a standard of performance for a specific unit or subcategory of units, states will evaluate the opportunities for HRI from the following actions.

(a) Adopt HRI Training for O&M Staff

EGU operators can obtain HRI by adopting ''awareness training'' to ensure that all O&M staff are aware of best practices and how those practices affect the unit's heat rate.

Some commenters agreed that HRI training can improve staff awareness of plant efficiency measures, which should result in improved plant performance. Other commenters stated that the benefits of HRI training are highly variable and depend on existing equipment and staff. Some commenters stated that the operating staff already routinely undergo HRI training and that states should not be required to consider these measures in developing their plans. The EPA agrees that the benefits will be variable from unit to unit depending upon the unit's historical O&M practices. If operating staff at a source already undergo routine HRI training, then the state will note that in the standard-setting process. Just as an EGU that has recently installed new or reconstructed boiler feed pumps would not be expected to replace those pumps, a source that already has an effective HRI training program in place would not be expected to implement a new HRI training program. The EPA is finalizing a determination that this practice is an element of the BSER because it can result in emission reductions and can be broadly implemented at reasonable cost.

(b) Perform On-Site Appraisals To Identify Areas for Improved Heat Rate Performance

Some large utilities have internal groups that can perform on-site evaluations of heat rate performance improvement opportunities. Outside (*i.e.,* third-party) groups can also provide site-specific/unit-specific evaluations to identify opportunities for HRI.

Commenters stated that the benefits of on-site appraisals are variable, speculative, and site-specific. Commenters stated that no state should determine what opportunities a coal-fired EGU might find during an on-site appraisal, and, therefore, that states should not be required to evaluate the applicability of on-site appraisals when developing their plans and establishing standards of performance for existing sources within their jurisdiction. The EPA agrees that the benefits of on-site appraisals will be variable and site-specific. As with other BSER measures, it will be up to each state to determine the extent of this requirement. States may require that the owner/operator perform an on-site appraisal to identify areas for HRI or the state may choose to have a third party conduct an on-site HRI appraisal.

(c) Improved Steam Surface Condenser—Cleaning

Effective operation of the steam surface condenser in a power plant can significantly improve a unit's heat rate. In fact, in many cases ineffective operation can pose the most significant hindrance to a plant trying to maintain its original design heat rate. Since the primary function of the condenser is to condense steam flowing from the last stage of the steam turbine to liquid form, it is most desirable from a thermodynamic standpoint that this occurs at the lowest temperature reasonably feasible. By lowering the condensing temperature, the backpressure on the turbine is lowered, which improves turbine performance.

Condenser cleaning. A condenser degrades primarily due to fouling of the tubes and air in-leakage. Tube fouling leads to reduced heat transfer rates, while air in-leakage directly increases the backpressure of the condenser and degrades the quality of the water. Condenser tube cleaning can be performed using either on-line methods or more rigorous off-line methods.

Commenters stated that improved steam surface condenser cleaning is a viable O&M option. Commenters stated that the need for such cleaning can be determined by enhanced monitoring of condenser performance. The EPA agrees with this assessment and notes that many owner/operators may already have steam surface condenser cleaning as part of routine O&M for their units. The EPA is finalizing a determination that this O&M practice is an element of the BSER because it provides opportunity for heat rate improvement and is broadly applicable.

e. Cost of HRI

The EPA finds that the costs of the HRI technologies and practices that the EPA has identified as the BSER and provided in Table 1 are reasonable because they improve the efficiency of the units to which they are applied. This results in lower operating costs (especially lower fuel costs). In fact, these HRI technologies and practices are the types of efficiency improvement measures that some owners and operators have reasonably implemented at times over the course of the operating life of their EGUs. In specific circumstances the cost to implement one or more of the technologies may be determined to be unreasonable—after consideration of source-specific factors. This will be determined when states establish standards by applying the BSER and taking other factors, including remaining useful life, into consideration.

(1) Reasonableness of Cost

As mentioned earlier, under CAA section 111(a)(1), the EPA determines ''the best system of emission reduction which (taking into account the *cost* of achieving such reduction . . .) . . . has been adequately demonstrated.'' 42 U.S.C. 7411(a)(1) (emphasis added). In several cases, the D.C. Circuit has elaborated on this cost factor in various ways, stating that the EPA may not adopt a standard for which costs would be ''exorbitant,'' [177] ''greater than the industry could bear and survive,'' [178] ''excessive,'' [179] or ''unreasonable.'' [180] These formulations appear to be synonymous and suggest a cost-reasonableness standard. Therefore, in this action, the EPA has evaluated whether the costs of HRI are considered to be reasonable as a general matter across the fleet of existing sources.

Any efficiency improvement made by an EGU will also reduce the amount of fuel consumed per unit of electricity output; fuel costs can account for a large percentage of the overall costs of power production. The cost attributable to CO_2 emission reductions, therefore, is the net cost of achieving HRIs after any savings from reduced fuel expenses. So, over some time period (depending upon, among other factors, the extent of HRIs, the cost to implement such improvements, and the unit utilization rate), the savings in fuel cost associated with HRIs may be sufficient to cover the costs of implementing the HRI measures. Thus, the net costs of HRIs associated with reducing CO_2 emissions from designated facilities can be relatively low depending upon each EGU's individual circumstances. It should be noted that this cost evaluation is not an attempt to determine the affordability of the HRI in a business or economic sense (*i.e.,* the reasonableness of the imposed cost is not determined by whether there is an economic payback within a predefined time period). However, the ability of EGUs to recoup some of the costs of HRIs through fuel savings supports a finding that costs are reasonable. While some EGUs may not realize the full potential of cost recuperation from fuel savings, the EPA finds that the net costs of implementing HRIs as an approach to reducing CO_2 emissions from fossil fuel-fired EGUs are reasonable because they are not exorbitant or excessive. In fact, these HRIs are the types of efficiency improvement measures that some owners and operators have reasonably implemented at times over the course of the operating life of their EGUs.

It will be up to the states to, either directly or indirectly, take cost into consideration in establishing unit-specific standards of performance. CAA section 111(d) explicitly allows the states to take into consideration, among other factors, the remaining useful life of the existing source in applying the standard of performance. For example, a state may find that an HRI technology is applicable for an affected coal-fired EGU but find that the costs are not reasonable when consideration is given to the timeframe for the planned retirement of the source (*i.e.,* the source's remaining useful life). A state may find that an HRI technology is applicable for an affected coal-fired EGU but find that the costs are not reasonable because the source is already implementing that HRI technology and it would not be reasonable to expect the source to replace that HRI technology with a newer version of the same technology.

There are several ways that cost can be considered. For example, when evaluating costs for criteria pollutants in a BACT analysis or for a ''beyond-the-floor'' analysis for HAP under CAA section 112, the emphasis is focused on the cost of control relative to the amount of pollutant removed—a metric typically referred to as the ''cost-effectiveness.'' There have been relatively few BACT analyses evaluating GHG reduction technologies for coal-fired EGUs. Therefore, there are not a large number of GHG cost-effectiveness determinations to compare against as a measure of the cost reasonableness. Nevertheless, in PSD and title V permitting guidance for GHG emissions, the EPA noted that ''it is important in BACT reviews for permitting authorities to consider options that improve the overall energy efficiency of the source or modification—through technologies, processes and practices at the emitting unit. In general, a more energy efficient technology burns less fuel than a less energy efficient technology on a per unit of output basis.'' [181] The EPA has also noted that a ''number of energy efficiency technologies are available for application to both existing and new coal-fired EGU projects that can provide incremental step improvements to the overall thermal efficiency.'' [182]

(2) Cost of the HRI Candidate Technologies Measures

The estimated costs for the BSER candidate technologies are presented below in Table 2. These are cost ranges from the 2009 Sargent & Lundy Study [183] updated to $2016.[184] These costs correspond to ranges of HRI (percent) presented earlier in Table 1.

[177] *Lignite Energy,* 198 F.3d at 933.

[178] *Portland Cement,* 513 F.2d at 508.

[179] *Sierra Club,* 657 F.2d at 343.

[180] *Id.*

[181] See page 21, ''PSD and Title V Permitting Guidance for Greenhouse Gases,'' EPA–457/B–11–001, March 2011; *https://www.epa.gov/sites/production/files/2015-12/documents/ghgpermittingguidance.pdf.*

[182] *See* page 25, ''Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Coal-fired Electric Generating Units,'' October 2010; *https://www.epa.gov/sites/production/files/2015-12/documents/electricgeneration.pdf.*

[183] ''Coal-Fired Power Plant Heat Rate Reductions'' Sargent & Lundy report SL–009597 (2009) Available in the rulemaking docket at EPA–HQ–OAR–2017–0355–21171.

[184] The conversion factor comes from Federal Reserve Economic Data (FRED). *See https://fred.stlouisfed.org.*

TABLE 2—SUMMARY OF COST ($2016/kW) OF HRI MEASURES

HRI Measure	<200 MW		200–500 MW		>500 MW	
	Min	Max	Min	Max	Min	Max
Neural Network/Intelligent Sootblowers	4.7	4.7	2.5	2.5	1.4	1.4
Boiler Feed Pumps	1.4	2.0	1.1	1.3	0.9	1.0
Air Heater & Duct Leakage Control	3.6	4.7	2.5	2.7	2.1	2.4
Variable Frequency Drives	9.1	11.9	7.2	9.4	6.6	7.9
Blade Path Upgrade (Steam Turbine)	11.2	66.9	8.9	44.6	6.2	31.0
Redesign/Replace Economizer	13.1	18.7	10.5	12.7	10.0	11.2
Improved O&M Practices	Minimal capital cost					

These costs presented in Table 2 represent both capital and O&M costs. Investments in HRI measures at EGUs should also result in fuel savings which can offset some or all of the cost of the HRI. However, the EPA does not suggest that HRI measures should meet any particular economic criterion (*e.g.,* pay for themselves through reduced fuel costs) in order to be applied in state plans for the establishment of source-specific standards of performance.

The technical applicability and efficacy of HRI measures and the cost of implementing them are dependent upon site specific factors and can vary widely from site to site. Because there is inherent flexibility provided to the states in applying the standards of performance, there is a wide range of potential outcomes that are highly dependent upon how the standards are applied (and to what degree states take into consideration other factors, including remaining useful life).

Because the heat rate improvement technologies result in fuel savings and other potential cost savings and the listed candidate technologies are the types of improvements and equipment upgrades that have been previously undertaken, the EPA finds that the costs of the HRI technologies and practices that have been identified as the BSER and provided in Table 1 are reasonable.

f. Non-Air Quality Health and Environmental Impacts, Energy Requirements, and Other Considerations

As directed by CAA section 111(a)(1), the EPA has taken into account non-air quality health and environment requirements for each of the candidate BSER technologies listed in Tables 1 and 2. None of the candidate technologies, if implemented at a coal-fired EGU, would be expected to result in any deleterious effects on any of the liquid effluents (*e.g.,* scrubber liquor) or solid by-products (*e.g.,* ash, scrubber solids). The EPA has also taken into account energy requirements. All of these candidate technologies, when implemented, would have the effect of improving the efficiency of the coal-fired EGUs to which they are applied. As such, the EGU would be expected to use less fuel to produce the same amount of electricity as it did prior to the efficiency (heat rate) improvement. None of the candidate technologies is expected to impose any significant additional auxiliary energy demand.

Implementation of heat rate improvement measures also would achieve reasonable reductions in CO_2 emissions from designated facilities in light of the limited cost-effective and technically feasible emissions control opportunities. In the same vein, because existing sources face inherent constraints that new sources do not, existing sources present different, and in some ways more limited, opportunities for technological innovation or development. Nevertheless, the final emissions guidelines encourage technological development by promoting further development and market penetration of equipment upgrades and process changes that improve plant efficiency leading to reasonable reductions in CO_2 emissions.

3. Discussion of ''Rebound Effect''

At proposal, the EPA solicited comment on potential CO_2 emissions and generation changes that might occur as a result of efficiency improvements at designated facilities, including potential increased generation to the point of a net increase in emissions from a particular facility, also referred to as the ''rebound effect.'' In some instances, it is possible that certain sources increase in generation (relative to some baseline) as a result of lower operating costs from adoption of candidate technologies to improve their efficiency. The EPA conducted analysis and modeling for the ACE proposal, and found that while there were instances (in some scenarios) where a limited number of designated facilities that adopted HRI increased generation to the point of increasing mass emissions notwithstanding the lower emissions rate resulting from HRI adoption, due to their improved efficiency and marginally improved economic competitiveness relative to other electric generators, the designated facilities as a group reduce emissions because they can generate higher levels of electricity with a lower overall emission rate.

Some commenters on the proposed rule highlighted environmental and legal concerns with the rebound effect as undermining the BSER, while others commented that the concern was de minimis, not rooted in any legal basis, and not germane to establishing standards of performance. On one side, some commenters asserted that the determined BSER is not properly designed because it would not achieve emission reductions if it results in higher utilization and, therefore, emission increases. Some doubted the EPA claims of lower systemwide emissions and said the EPA had not adequately analyzed the concern. Some asserted that the assumptions used in the analysis do not reflect real world considerations that efficiency of all fossil fuel plants degrades over time, rather than being static. Also, some asserted that the EPA had understated the amount of coal capacity that will likely retire in its analysis, and, thus, the remaining coal fleet will consist of more efficient and competitive units that may end up emitting more than the EPA's analysis shows. In addition, some asserted that the EPA's proposed NSR reforms allow sources to extend lifetimes without requiring controls, exacerbating rebound issues.

Other commenters asserted that CAA section 111 does not require the Agency to obtain absolute reductions in emissions at a sector-wide level, and the EPA's obligation is to determine the BSER through evaluation of emissions performance per output at the unit-level. Some commenters stated that any rebound effect from more efficient units is most likely to come at expense of lower-efficiency coal units, negating the effect. Also, commenters contended that rebound is unlikely to change the

dispatch order and/or utilization of units based upon the levels of HRI that are reasonable and part of ACE, and, thus, any rebound effect would be de minimis.

The EPA agrees with the commenters who do not see the rebound effect as undermining the BSER determination in this rule, because this rule is aimed at improving a source's emissions *rate* performance at the unit-level. Indeed, in repealing the ''percent reduction'' requirement from the 1977 CAA Amendments, Congress expressly acknowledged that standards of performance were to be expressed as an emissions rate.[185] In addition, as noted above, this rule results in overall reductions of emissions of CO_2. Because the BSER in this rule improves the emissions rate of designated facilities and results in overall reductions, the limited rebound effect that may occur does not undermine the BSER.

Nonetheless, to the extent commenters have asserted that ACE would cause an increase in aggregate CO_2 emissions due to some sources operating more, this concern is not supported by our analysis. The EPA conducted updated modeling and analysis for the final ACE rule (see Chapter 3 of the RIA for more details) and confirmed that aggregate CO_2 emissions from the group of designated facilities are anticipated to decrease (outweighing any potential CO_2 increases related to increased generation by certain units).

The final ACE rule establishes the BSER, and a framework for states to determine rate-based standards of performance for designated facilities. The BSER for ACE is expressed as a rate-based approach, which should necessarily result in rate-based emission reductions. The modeling and analysis show individual units and the entire coal fleet reducing emission rates, as well as an aggregate decrease in mass emissions. As such, any potential ''rebound effect'' is determined to be small and manageable (if necessary) and does not require any specific remedy in the final rule. However, if a state determines that the source-specific factors of a designated facility dictate that the rebound effect is an issue that should be considered in setting the standard of performance, that is within the state's discretion to consider in the process of establishing a standard of performance for that particular existing source. As noted above and as a result of modeling, the EPA does not expect these considerations to be necessary in the state plan development process.

4. Systems That Were Evaluated But Are Not Part of the Final BSER

The EPA identified several systems of GHG emission reduction that may be applied at or to designated facilities but did not propose that they should be part of the BSER. The Agency solicited comment on the rationale for eliminating or not identifying those alternative systems as part of the BSER. After consideration of public comments, the EPA is not revising its proposed determination and is not including any additional or different systems of emission reduction in the final BSER determination. A description of the considered systems of emission reduction that are not part of the final BSER along with a summary of significant public comments is provided below.

The EPA previously considered co-firing (including 100 percent conversion) with natural gas and implementation of carbon capture and storage (CCS) as potential BSER options. *See* 80 FR 64727. In that analysis, the EPA found some natural gas co-firing and CCS measures to be technically feasible but determined that switching from coal to gas is ''a relatively costly approach to CO_2 reductions at existing coal steam boilers when compared to other measures such as heat rate improvements. . .'' [186] and that the cost to implement CCS for existing source standards is not reasonable and that ''CCS is not an appropriate component of the [BSER].'' [187] A more detailed description of the current consideration of these technologies is provided below.

a. Natural Gas Repowering

Coal-fired utility boilers can reduce their emissions by firing natural gas instead of—or in combination with—coal. This can be done in three different ways: (1) By repowering, (2) by co-firing, or (3) by refueling. *Repowering* is when an existing coal-fired boiler is replaced with one or more natural gas-fired stationary combustion turbines, while still utilizing the existing steam turbines. *Co-firing* and *refueling* involve the burning of natural gas at an existing boiler.[188]

In the ACE proposal, the EPA did not consider natural gas repowering as a potential system of emission reduction (*i.e.,* as a candidate for the BSER) based on the reasoning that this option would fundamentally redefine the existing sources subject to the rule.[189] Some commenters argued, however, that coal-fired utility boilers can reduce emissions through natural gas repowering and it should be the BSER. Other commenters argued that the 'redefining the source' concept from PSD was inappropriate for application to NSPS. After considering public comments on this issue, the EPA concludes that repowering should not be considered for purposes of CAA section 111(d). As described in more detail below, repowering is not a ''system'' of emission reduction for a source at all because it cannot be applied to the existing sources subject to this rule (steam generating units). Rather, repowering these existing units would replace them entirely with a different type of source (stationary combustion turbines) that would be subject to the NSPS in 40 CFR part 60, subpart TTTT.[190] Even if repowering were to be evaluated to determine if it was part of the BSER, the EPA has found non-air quality health and environmental impacts and energy requirements that demonstrate that repowering is not part of the BSER.[191]

As described above, a ''standard of performance'' under CAA section 111(d) must be ''establishe[d]'' for an ''existing source.'' However, repowering a coal-fired boiler—that is, the replacement of a boiler with a stationary combustion turbine—creates a ''new source,'' which is regulated directly by the EPA under 40 CFR part 60, subpart TTTT (establishing standards for the control of GHG emissions from new, modified, or reconstructed steam generating units, IGCCs, or *stationary combustion turbines*). The ''best system of emission reduction'' for an *existing* source,

[185] *See* 1990 CAA Amendments, section 403, 104 Stat. at 2631 (''the Administrator shall promulgate revised regulations for standards of performance . . . that, at a minimum, require any source subject to such revised standards to emit sulfur dioxide at a *rate* not greater than would have resulted from compliance by such source with the applicable standards of performance under this section prior to such revision'') (emphasis added).

[186] Technical Support Document (TSD) for Carbon Pollution Guidelines for Existing Power Plants: Emission Guidelines for Greenhouse Gas Emissions from Existing Stationary Sources: Electric Utility Generating Units; Chapter 6, June 10, 2014, Available at Docket Item No. EPA–HQ–OAR–2013–0602–36852.

[187] *Id.* Chapter 7

[188] Co-firing and refueling are discussed in section III.E.4.b of this preamble.

[189] *See* 83 FR 44753.

[190] The EPA is not concluding whether or not the 'redefining the source' concept can or should be applied in the context of the NSPS program.

[191] These non-air quality health and environmental impacts and energy requirements are discussed in more detail below in the discussion of refueling and co-firing. Except to the extent that discussion involves the inefficient combustion of natural gas, the non-air quality health and environmental impacts and energy requirements found for these technologies are similar, if not identical, to those the EPA has found for repowering.

therefore, simply cannot be the creation of a *new* source that is regulated under separate authority. Otherwise, the EPA could subvert the provisions of CAA section 111(d) (which authorizes states to regulate existing sources in the first instance) and require all existing sources to transform into ''new sources,'' which the Agency can directly regulate under CAA section 111(b). Therefore, repowering a coal-fired boiler is not a ''system'' within the scope of the BSER.

b. Natural Gas Co-Firing and Refueling

Some coal-fired utility boilers use natural gas or other fuels (such as distillate fuel oil) for startup operations, for maintaining the unit in ''warm standby,'' or for NO_X control (either directly as a combustion fuel or in configuration referred to as natural gas reburn). During such periods of natural gas co-firing, an EGU's CO_2 emission rate is reduced as natural gas is a less carbon intensive fuel than coal. For example, at 10 percent natural gas co-firing, the net emissions rate (lb/MWh-net) of a typical unit could decrease by approximately 4 percent.

Commenters stated that the EPA should determine that natural gas co-firing is the BSER because it is technically feasible, readily available, achieves significant emission reductions, and may be the most cost-effective option for some facilities. Some commenters also provided data (from EIA) to assert that co-firing is widely used and adequately demonstrated at coal-fired EGUs. The commenters contended that a significant number of coal-fired EGUs have the capacity to burn both natural gas and coal. One commenter asserted that 35 percent of coal-fired utility boilers across 33 states co-fired with natural gas. Another commenter provided a table listing coal-fired EGUs that have recently converted to natural gas or are co-firing with natural gas. One commenter cited data from the EIA and claimed that 48 percent of steam generating EGUs are already co-firing some amount of natural gas.

While the EPA agrees with the assertion that there are existing coal plants that have some access to a supply of natural gas, the EPA disagrees that the data demonstrate that co-firing is a system of emission reduction that has been or that could be implemented on a nationwide scale at reasonable cost. The EPA believes that commenters have conflated operational co-firing (*i.e.,* co-firing coal and natural gas to generate electricity) with startup co-firing (*i.e.,* only using natural gas to heat up a utility boiler or to maintain temperature during standby periods). Coal-fired boilers always use a secondary fuel (most often natural gas or distillate fuel oil), utilizing burners specifically configured to bring the boiler from a cold, non-operating status to a temperature where coal, the primary fuel, can be safely introduced for normal operations.

The EPA conducted its own analysis using EIA fuel use data from 2017.[192] The EPA's analysis supports the assertion that nearly 35 percent of coal-fired units co-fired (in either sense of co-firing as described above) with natural gas in 2017. However, very few—less than four percent of coal-fired units—co-fired with natural gas in an amount greater than five percent of the total annual heat input. This strongly suggests that most of the natural gas that was utilized at these sites was used as a secondary fuel for unit startup or to maintain the unit in ''warm standby'' rather than as a primary fuel for generation of electricity. Further, the small number of units that co-fired with greater than five percent natural gas during 2017 operated at an average capacity factor of only 24 percent—indicating that they are not the most economical units and are not dispatched as frequently as those units that used less than five percent natural gas. For comparison, in 2017, 62 percent of coal-fired utility boilers co-fired with some amount of distillate fuel oil and, as with natural gas, the vast majority of those units used less than 5 percent distillate fuel oil (again, strongly suggesting that it is primarily used as a secondary fuel for startup and warm standby).

The EPA also disagrees that the data demonstrate that co-firing can be considered at the national level as an adequately demonstrated system of emission reduction and that there are easy paths to expand it at a reasonable cost. The EIA 923 fuel use data indicated that about 65 percent of coal-fired utility boilers use something other than natural gas as the secondary fuel for periods of startup and standby operations. Distillate fuel oil is by far the most commonly used secondary fuel. While the use of distillate fuel oil does not necessarily mean that the unit lacks access to natural gas, it suggests that for many of those units, there is an inadequate supply to serve even as a secondary fuel for startup and standby operations. The 2018 average price [193] of distillate fuel oil was more than four times higher than that of natural gas; so, if there was an adequate supply of natural gas, then it would be much more economically favorable to utilize that natural gas rather than the much more expensive distillate fuel oil. As explained earlier, for plants that require additional or new pipeline capacity, the capital cost of constructing new pipeline laterals is approximately $1 million per mile of pipeline built. Therefore, a 50-mile gas pipeline would add $50 million—$100/kW for a typical 500 MW unit—to the capital costs of adding co-firing capability.

As mentioned earlier, the EPA has previously evaluated the costs associated with using natural gas refueling or co-firing as a GHG mitigation option. *See* 79 FR 34875. For a typical base-load coal-fired EGU, the average cost of CO_2 reductions achieved through co-firing with 10 percent natural gas would be approximately $136 per ton of CO_2. While a utility boiler that is converted to 100 percent natural gas-fired can offset some of the capital costs by reducing its fixed operating and maintenance costs (though, as discussed below, the costs would still be considerably higher than the HRI technologies that the EPA identified as the BSER), a unit that is co-firing natural gas with coal would continue to bear the fixed costs associated with equipment needed for coal combustion, raising the cost per ton of CO_2 reduced.

In determining the BSER, CAA section 111(a)(1) also directs the EPA to take into account non-air quality health and environmental impacts and energy requirements. The EPA is unaware of any significant non-air quality health or environmental impacts associated with natural gas co-firing. However, in taking energy requirements into account, the EPA notes that co-firing natural gas in coal-fired utility boilers is not the best or most efficient use of natural gas and, as noted above, can lead to less efficient operation of utility boilers. NGCC stationary combustion turbine units are much more efficient at using natural gas as a fuel for generating electricity and it would not be an environmentally positive outcome for utilities and owner/operators to redirect natural gas from the more efficient NGCC EGUs to the less efficient utility boilers to satisfy an emission standard at the utility boiler. Some commenters disagreed with the EPA's claim that increased use of natural gas in a utility boiler would

[192] See the memorandum ''2017 Fuel Usage at Affected Coal-fired EGUs,'' available in the rulemaking docket (Docket ID No. EPA–HQ–OAR–2017–0355).

[193] The 2018 average U.S. power generation fuel costs for natural gas was $3.52 per million Btu while the cost for distillate fuel oil for power generation was $16.13 per million Btu. U.S. EIA Short Term Energy Outlook, *https://www.eia.gov/outlooks/steo/tables/pdf/2tab.pdf.*

come at the expense of its use in more efficient NGCC units. The EPA did not intend to imply that there is now (or that there will be) a restricted supply of natural gas. Instead, the EPA suggested that, if there were to be an increase in the use of natural gas, the more efficient use for that increased natural gas would be as fuel for under-utilized NGCC units rather than in less efficient utility boilers. The EPA does not believe that establishing a BSER that, for all practical purposes, would mandate increased use of natural gas in utility boilers is good policy.

Given that a natural gas co-firing-based BSER would result in standards that are more costly than standards based on application of the candidate technologies for heat rate improvements, that such a BSER would encourage inefficient use of natural gas, that implementation would be even more expensive and challenging for those units that currently have limited or no access to natural gas, the EPA concludes that co-firing natural gas in coal-fired boilers is not the BSER.

Some commenters requested that co-firing be added to the list of HRI candidate technologies (discussed in more detail below), the combination of which would represent the BSER. However, whereas all coal-fired utility boilers can apply (or have already applied) HRI measures, natural gas co-firing does not satisfy the same CAA section 111(a)(1) criteria (see above). Moreover, co-firing can negatively impact a unit's heat rate (efficiency) due to the high hydrogen content of natural gas and the resulting production of water as a combustion by-product.[194] And depending on the design of the boiler and extent of modifications, some boilers may be forced to de-rate (a reduction in generating capacity) to maintain steam temperatures at or within design limits, or for other technical reasons. Accordingly, natural gas co-firing cannot be applied in combination with the HRI measures identified as the BSER. However, natural gas co-firing might be appropriate for certain sources as a compliance option. For a discussion of compliance options, see below section III.F.2.

Some commenters also suggested that the EPA's concerns about using gas inefficiently were not persuasive because the United States has such an abundant supply of natural gas. The EPA disagrees for many of the same reasons that the Agency relied upon to reject the consideration of natural gas as the BSER. First, it is on the higher end of the cost of the measures the EPA considered even for units with ready natural gas availability; second, many designated facilities do not have natural gas availability, so it is not broadly applicable.

The same factors discussed above lead the Agency to conclude that refueling also cannot be BSER. *Refueling* is when an existing coal-fired boiler is converted to a natural gas-fired boiler (*i.e.,* firing 100% natural gas). In the ACE proposal, the EPA did not consider natural gas refueling as a potential system of emission reduction (*i.e.,* as a candidate for the BSER) based on the reasoning that this option would fundamentally redefine the existing sources subject to the rule.[195] Some commenters argued, however, that coal-fired utility boilers can reduce emissions through natural gas refueling and should be the BSER. Other commenters argued that the 'redefining the source' concept from PSD was inappropriate for application to NSPS.[196] After considering public comments on this issue, the EPA concludes that natural gas refueling, like natural gas co-firing, is not the BSER.

The EPA has previously evaluated the costs associated with using natural gas refueling or co-firing as a GHG mitigation option.[197] The capital costs of plant modifications required to switch a coal-fired EGU completely to natural gas are roughly $100–300/kW, not including any costs associated with constructing additional pipeline capacity. Many coal-fired plants do not have immediate and ready access to any supply of natural gas. Others that do have access to a supply of natural gas have only a limited supply (*i.e.,* enough for startup and warm standby firing, but not enough for full load firing). For plants that require additional pipeline capacity, the capital cost of constructing new pipeline laterals is approximately $1 million per mile of pipeline built. A 50-mile gas pipeline would add $50 million—$100/kW for a typical 500 MW unit—to the capital costs of the conversion.

While a coal-fired utility boiler that is converted to a 100 percent natural gas-fired boiler could offset some of the capital costs by reducing its fixed operating and maintenance costs, in most cases, the most significant cost change associated with switching from coal to gas is likely to be the difference in fuel cost. Using the EIA's projections of future coal and natural gas prices, switching a utility boiler from coal-fired to natural gas-fired could more than double the unit's fuel cost per MWh of generation. For a typical base-load coal-fired EGU, the average cost of CO_2 reductions achieved through gas conversion would be approximately $75 per ton of CO_2. This cost could also be much higher as there would very likely be an increase in natural gas prices corresponding to the increased demand from widespread coal-to-gas conversion.

The EPA also found that consideration of energy requirements (as required by CAA section 111(a)(1)) provides additional reasons why refueling natural gas in a utility boiler should not be considered BSER.[198] Burning natural gas in a utility boiler is not the best use of such fuel as it is much less efficient than burning it in a combustion turbine. New natural gas combined cycle (NGCC) units can convert the heat input from natural gas to electricity with an efficiency of more than 50 percent.[199] A coal-fired utility boiler that is repurposed to burn 100 percent natural gas will see a reduction in efficiency of up to five percent (to less than 40 percent efficiency) as the higher hydrogen content in the natural gas fuel will lead to higher moisture losses that will negatively impact the boiler efficiency.[200] Widespread refueling is not a practice that the EPA should be promoting as it is not the most efficient use of natural gas. Utilities choosing to increase use of natural gas in a combined cycle or simple cycle combustion turbine is a more efficient way to utilize natural gas for electricity generation. In reaching this determination, the EPA is mindful of Congress's direction to ''tak[e] into account . . . energy requirements'' in determining the best system of emission reduction in CAA section 111(a)(1). Consideration of ''energy requirements'' is one of the factors informing the EPA's judgment that it would be inappropriate to base performance standards on an

[194] Natural gas firing or co-firing degrades the boiler's efficiency (relative to the use of coal) primarily due to the increased production of water. Some of the heat that is produced in the combustion process will be used to heat that flue gas moisture (which will exit with the stack gases) rather than to converting water in the boiler tubes to steam. The efficiency declines because there is less heat available to produce useful steam.

[195] *See* 83 FR 44753.

[196] As with repowering, the EPA is not concluding whether or not the ''redefining the source'' concept can or should be applied in the context of the NSPS program.

[197] *See* 79 FR 34875.

[198] *See* 83 FR 44762.

[199] ''Cost and Performance Baseline for Fossil Energy Plants Volume 1a: Bituminous Coal (PC) and Natural Gas to Electricity'' Rev. 3, DOE/NETL–2015/1723 (July 2015).

[200] ''Leveraging Natural Gas: Technical Considerations for the Conversion of Existing Coal-Fired Boilers'', Babcock Power Services, Presented at 2014 ASME Power Conference (July 2014), Baltimore, MD. Available in the rulemaking docket.

inherently energy-inefficient practice such as refueling.

NGCC units have become the preferred option for intermediate and baseload natural gas power generation. Other technologies (such as simple cycle aeroderivative turbines) offer significant advantages for peaking purposes in that they can start up quickly and require fewer staff to operate. Some combination of aeroderivative turbines and flexible combined cycle units offer advantages in both efficiency and the flexibility to change loads when compared to utility boilers. For these reasons, the power sector has moved away from the use of gas-fired boilers. There have been no new natural gas-fired utility boilers built since the 1980s.

There have been some cases where coal-fired utility boilers have chosen to refuel (*i.e.,* have chosen to convert to natural gas-firing). In those cases, the motivation was largely to preserve reserve capacity without investing in the air pollution controls needed to meet air emission standards—especially MATS.[201] The EPA examined fuel use data submitted by plant owner/operators to the U.S. Energy Information Administration (EIA) on Form 923.[202] According to that data, there were 131 natural gas-fired utility boilers [203] in 2012 and 170 such units in 2017. The average capacity factor for those units was only 11 percent in 2012 and 2017. Between 2012 (before the MATS compliance date) and 2017 (after MATS was fully in effect), 39 utility boilers converted from coal-fired units to become natural gas-fired utility boilers. Those natural gas-fired utility boilers operated at an average capacity factor of less than 10 percent, indicating that they were likely utilized only during periods of high demand.

These non-air quality health and environmental impacts and energy requirements demonstrate that refueling is not the BSER.

c. Biomass Co-Firing

The EPA previously proposed that co-firing of biomass in coal-fired utility boilers is not the BSER for existing fossil fuel-fired sources due to cost and achievability considerations.[204] Although biomass co-firing methods are technically feasible and can be cost-effective for some designated facilities, these factors and others (namely, that any potential net reductions in emissions from biomass use occur outside of the regulated source and are outside of the control of the designated facility, which is incompatible with the interpretation of the EPA's authority and the permissible scope of BSER as set forth in section II above) are the considerations that prevent its adoption as the BSER for the source category.

In the ACE proposal, the EPA sought comment on the inclusion of forest-derived and non-forest biomass as non-BSER compliance options for affected units to meet state plan standards.[205] In response, the EPA received comments both supporting and opposing the use of biomass for compliance (as discussed in section III.F.2.b); however, commenters also spoke to the appropriateness of including biomass firing as part of the BSER. Some commenters noted that co-firing with biomass cannot be a ''system of emission reduction'' as it increases CO_2 emissions at the source. Commenters further asserted that the EPA has failed to demonstrate how firing biomass meets the CAA section 111 requirements and the criteria for qualifying as a system of emission reduction described in the Proposed Repeal and the ACE proposal.

Upon consideration of comments and in accordance with the plain language of CAA section 111 (discussed above in section II.B), the EPA is now clarifying that biomass does not qualify as a system of emission reduction that can be incorporated as part of, or in its entirety, as the BSER. As described in section III.F.2 of this preamble. the BSER determination must include systems of emission reduction that are achievable at the source. While the firing of biomass occurs at a designated facility, biomass firing in and of itself does not reduce emissions of CO_2 emitted from that source. Specifically, when measuring stack emissions, combustion of biomass emits more mass of emissions per Btu than that from combustion of fossil fuels, thereby increasing CO_2 emissions at the source. Recognition of any potential CO_2 emissions reductions associated with biomass utilization at a designated facility relies on accounting for activities not applied at and largely not under the control of that source, including consideration of offsite terrestrial carbon effects during biomass fuel growth, which are not a measure of emissions performance at the level of the individual designated facility. Use of biomass in affected units is therefore not consistent with the plain meaning of ''standard of performance'' and cannot be considered as part of the BSER.[206]

Additionally, many commenters agreed with the ACE proposal that biomass co-firing should not be part of the BSER because it is not sufficiently cost-effective, there is not a reliable supply of biomass fuel accessible nationally, co-firing with biomass has a negative impact on unit heat rate, and co-firing requirements would ''redefine the source.'' Many commenters supported inclusion of fuel co-firing as a component of the BSER but focused primarily on argument for natural gas co-firing (as discussed earlier). Some of these commenters specifically asserted that biomass use is a widely available and proven GHG reduction technology.

As discussed by the EPA previously in the ACE proposal and other instances,[207] biomass fuel use opportunities are dependent upon many regional considerations and limitations—namely fuel supply proximity, reliability and cost—that prevent its adoption as BSER on a national level (whereas nearly all sources can or have implemented some form of HRI measures). The infrastructure, proximity, and cost aspects of co-firing biomass at existing

[201] *See* 40 CFR part 63, subpart UUUUU.

[202] Monthly fuel use data is submitted to the EIA on Form 923. Available at *https://www.eia.gov/electricity/data/eia923/.* For details of the EPA data analysis, see the memorandum ''2017 Fuel Usage at Affected Coal-fired EGUs'' available in the rulemaking Docket ID No. EPA–HQ–OAR–2017–0355.

[203] Natural gas-fired utility boilers are those with capacity of more than 25 MW that use more than 90 percent natural gas on a heat input basis.

[204] *See* ACE proposal and 80 FR 64756.

[205] *See* 83 FR 44766.

[206] Notwithstanding this conclusion in the context of CAA section 111(d), the EPA believes that a PSD permitting authority may still reach the conclusion that use of some type(s) of biomass is BACT for greenhouse gases in the context of a PSD permit application where the applicant proposes to use biomass, as discussed in the EPA's Guidance for Determining Best Available Control Technology for Reducing Carbon Dioxide Emissions from Bioenergy Production (March 2011). While biomass combustion may result in more greenhouse gas emissions (in particular CO_2) per unit of production than combustion of fossil fuels, a comparative analysis of biomass and other fuels may not be required in the BACT context. As EPA has observed, ''where a proposed bioenergy facility can demonstrate that utilizing a particular type of biogenic fuel is fundamental to the primary purpose of the project, then at the first step of the top-down process, permitting authorities can rely on that to determine that use of another fuel would redefine the proposed source.'' Bioenergy BACT Guidance at 15. Moreover, even if biomass is compared to fossil fuels and ranked lower at Step 3 of a top-down BACT analysis, broader offsite environmental, economic, and energy considerations related to biomass use (*e.g.,* any potential offsite net carbon sequestration associated with growth of the biomass feedstock) may be considered in Step 4 of a top-down BACT analysis. *See* Bioenergy BACT Guidance at 20–21. It is therefore consistent to determine that the firing of biomass does not qualify as a ''standard of performance'' for setting or complying with the BSER because it does not reduce the GHG emissions of a fossil fuel-fired source, while also allowing the consideration of any potential offsite environmental, economic, or energy attributes when considering an application that treats biomass as BACT for a proposed biomass facility in the PSD permitting context.

[207] *See* 80 FR 64756.

coal EGUs are similar in nature and concept to those of natural gas. While there are a few existing coal-fired EGUs that currently co-fire with biomass fuel, those are in relatively close proximity to cost-effective biomass supplies. Therefore, even if biomass firing could be considered a ''system of emission reduction,'' the EPA is not able to include the use of biomass fuels as part of the BSER in this action due to the current cost and achievability considerations and limitations discussed above. Additional discussion on biomass is provided in section III.F.2.b. below.

d. Carbon Capture and Storage (CCS) [208]

In the ACE proposal, the EPA noted that while CCS is an advanced emission reduction technology that is currently under development, the Agency must balance the promotion of innovative technologies against their economic, energy, and non-air quality health and environmental impacts. The EPA proposed that neither CCS nor partial CCS are technologies that can be considered the BSER for existing fossil fuel-fired EGUs and explicitly solicited comment on any new information regarding the availability, applicability, costs, or technical feasibility of CCS technologies.

Many commenters agreed with EPA's proposed finding that CCS (including partial CCS) should not be part of the BSER. The commenters stated that it is not adequately demonstrated, sufficiently cost-effective, or nationally available. Other commenters disagreed and claimed that CCS is technically feasible and adequately demonstrated and should be part of BSER, asserting that the EPA has previously provided evidence in the record during the 2016 denial of petitions for reconsideration of the CPP that CCS had been successfully implemented at power plants. Commenters also asserted that there are many vendors that offer carbon capture technologies for power plants, which demonstrates that the technology is commercially available and adequately demonstrated.

CCS is a difficult and complicated process, requiring numerous pieces of process equipment to capture CO_2 from the exhaust gas, compress it for transport, transport it in a CO_2 pipeline, inject it, and then monitor the injection space to ensure the CO_2 remains stored. Currently there are only two large-scale commercial applications of post-combustion CCS at a coal-fired power plant—the Boundary Dam project in Saskatchewan, Canada and the Petra Nova project at the W.A. Parish plant near Houston, Texas.[209] Commenters noted that both of the demonstration projects were heavily subsidized by government support and were able to generate additional income from the sale of captured CO_2 for enhanced oil recovery (EOR) and, without these subsidies, neither project would have been economically viable.

Commenters addressed the cost of installing CCS on an existing coal-fired EGU and noted that it can be much costlier and more technically challenging to retrofit the technology to an existing EGU as compared to installation on a newly constructed unit (where the system can be incorporated into the design and space allocation of the new plant). Other commenters claimed that CCS can achieve significant emission reductions (up to 90 percent), that there is opportunity for some sources to generate income from the sale of captured CO_2, and that there are additional financial incentives from the recently approved 2018 Internal Revenue Code (IRC) section 45Q tax credits for stored CO_2, so now CCS may be more cost-effective than HRI options for some facilities. One commenter performed modeling runs that included the section 45Q tax credit and found that, for some sources, CCS would provide much greater emission reductions than HRI options at a reasonable cost and concluded that the EPA should include CCS as part of the BSER. Other commenters minimized the impact of the section 45Q tax credit for a variety of reasons.

Several commenters claimed that access to appropriate CO_2 storage locations is critical to the feasibility and cost of CCS. They described the geographic limitations of both deep saline aquifers and depleted oil fields (EOR fields) noting that 15 states have little or no demonstrated storage capacity or have very limited storage capacity and that EOR sites are similarly geographically limited, with 19 states having little or no demonstrated EOR opportunity. However, other commenters claimed that a technology need not be feasible at every site to be a component of BSER especially since the EPA is relying on site-specific analyses. The commenters noted that not all HRI options are applicable to every source, so the EPA cannot disregard CCS from the BSER options based on ''national availability.''

Commenters noted that 60 GW (or about 20 percent) of the coal-fired power plant capacity might be amenable to CCS based on locality and that North America has widespread and abundant geologic storage options with the capacity to sequester over 500 years of the U.S.'s current energy-related CO_2 emissions. Commenters claimed that 90 percent of existing coal-fired power plants are within 100 miles from the center of a basin with adequate storage capacity and more than half of the existing plants are less than 10 miles from the center of a basin.

The EPA has considered all these public comments and has concluded that, as proposed, CCS is not the BSER for emissions of CO_2 from existing coal-fired EGUs—nor does it constitute a component of the BSER, as some commenters have suggested. As discussed in section III.E.1, above, concerning the ''guiding principles'' for identifying the BSER under CAA section 111(d), the BSER is based on what is adequately demonstrated and broadly achievable across the country. Under CAA section 111(b)(1), the EPA determines ''standards of performance'' for new sources and under section 111(d)(1), the states determine ''standards of performance'' for existing sources within their jurisdiction. Importantly, the term ''standard of performance'' is given a uniform definition under section 111(a)(1) for purposes of both new and existing sources, and, in accordance with that definition, the Administrator is required to determine the BSER as a predicate for the standards of performance for both new and existing sources. In this manner, the text and structure of section 111 indicate that the EPA must make the BSER determination at the national, source-category level. Thus, the EPA disagrees with the commenters who argue that because the EPA is emphasizing that standard setting will be done on a unit-by-unit (rather than fleetwide) basis, all viable emission reduction options should be evaluated at the unit level.

Whereas HRI measures are broadly applicable to the entire existing coal-

[208] CCS is sometimes referred to as Carbon Capture and Sequestration. It is also sometimes referred to as CCUS or Carbon Capture Utilization and Storage (or Sequestration), where the captured CO_2 is utilized in some useful way and/or permanently stored (for example, in conjunction with enhanced oil recovery). In this document, the EPA considers these terms to be interchangeable and for convenience will exclusively use the term CCS.

[209] Several commenters noted that the Petra Nova project received funding from the U.S. Department of Energy (DOE) through the Clean Coal Power Initiative and stated that the project is, pursuant to section 402(i) of the Energy Policy Act of 2005 (EPAct05), therefore, precluded from being used to demonstrate that the technology is ''adequately demonstrated'' under section 111 of the CAA. Some commenters noted that the DOE funding was only for the initial 60 MW slip-stream demonstration project, but the CCS project at Petro Nova was later expanded to a 240 MW slip-stream and no federal funding was received for this expansion.

fired power plant fleet, the EPA determines that CCS or partial CCS is not. The EPA agrees that there may be some existing coal-fired EGUs that find the application of CCS to be technically feasible and an economically viable control option, albeit only under very specific circumstances. However, the high cost of CCS, including the high capital costs of purchasing and installing CCS technology and the high costs of operating it, including high parasitic load requirements, prevent CCS or partial CCS from qualifying as BSER on a nationwide basis.

According to the DOE National Energy Technology Laboratory (NETL), the incremental cost from capital expenditures alone of installing partial or full capture CCS [210] on a new coal-fired EGU ranged from $626 (for 16% capture) to $2,098 (for full capture) per kW (2011 dollars).[211] These costs are for new CCS equipment installed on a new facility, but they fairly represent the costs of new CCS equipment installed on an existing facility; indeed, these costs are probably lower than the actual costs of installing new CCS equipment on an existing facility, because the costs of retrofitting pollution controls on an existing facility generally are greater than the costs of installing pollution controls on a new facility. In contrast, as noted elsewhere, the cost of the HRI that constitute the BSER for this rule range from $25–$47 per kW (2016 dollars). Thus, the costs of partial CCS, considering only the capital costs and not the operating costs, are far higher than—more than 13 times—the cost of what the EPA has identified as the BSER.

Viewing the costs of CCS through other prisms yields the same determination. According to NETL, the capital costs of a CCS system with 90 percent capture increases the cost of a new coal-fired power plant approximately 75 percent relative to the cost of constructing a new coal-fired power plant without post-combustion control technology. Furthermore, the additional auxiliary load required to support the CCS system consumes approximately 20 percent of the power plant's potential generation.[212] The NETL Pulverized Coal Carbon Capture Retrofit Database tool (April 2019) [213] estimates that the operating costs of existing coal-fired EGUs range from 22 to 44 $/MWh.[214] The incremental increase in generating costs, including the recovery of capital costs over a 30-year period, due to CCS range from 56 to 77 $/MWh.[215] For reference, according to the EIA, the average electricity price for all sectors in March of 2019 was 103.8 $/MWh.[216] About 60 percent of these latter costs (60 $/MWh) are associated with generation and 40 percent with transmission and distribution of the electricity.[217] Thus, the incremental increase in generating costs due to CCS by itself would equal or exceed the average generation cost of electricity for all sectors. The costs of partial CCS are less than full CCS, but due to economies of scale, costs do not reduce as quickly as reductions in the capture rate. For example, the capital costs of treating only 18 percent of the flue gas (a 16 percent reduction in emissions of CO_2) are about 30 percent of the capital costs of treating all of the flue gas (full capture or a 90 percent reduction in emissions of CO_2). Similarly, at full capture, treating only 18 percent of the flue gas (a 16 percent reduction in emissions of CO_2) still increases the cost of electricity by about 28 percent of the increase that results from treating all of the flue gas.[218] Again, these costs are probably lower than the actual costs of installing new CCS equipment on an existing facility. Not only are these costs far higher than what the EPA has identified as the BSER, they would almost certainly force the closure of the coal-fired power plants that would be required to install them. Many of those plants have a marginal profit margin, as demonstrated by the high rate of plant closure and the relatively low amounts of operation (*i.e.,* capacity factors) in recent years. Thus, these costs must be considered exorbitant. *See* section III.E.1. for a discussion of the guiding principles in determining the BSER.

As noted above, the Boundary Dam project in Saskatchewan, Canada and the Petra Nova project at the W.A. Parish plant near Houston, Texas are the only large-scale commercial applications of post-combustion CCS at a coal-fired power plant. They both have retrofit CCS or partial CCS, and they both received significant governmental subsidies—including, for the Petra Nova project, both direct federal grants from the DOE through the Clean Coal Power Initiative and the IRC section 45Q tax credits—and relied on nearby EOR opportunities. Due to the high costs of CCS, all of these subsidies and EOR opportunities were essential to the commercial viability of each project.[219]

Some commenters have asserted that the costs of CCS are reasonable and explain, as a central part of their assertion, that the availability of tax credits under section 45Q, as revised by the Bipartisan Budget Act of 2018, significantly lowers the costs of CCS. In fact, they have asserted, that the tax credits, which have an initial value of $35 per tonne (*i.e.,* metric ton) for CO_2 stored through EOR, offset about 70% of the cost of CCS, with EOR offsetting the rest.[220] However, the section 45Q tax credits are limited in time: The credit for equipment placed in service after the date of enactment of the Bipartisan Budget Act of 2018 is available, in general, only for facilities and equipment for which construction begins before January 1, 2024. IRC section 45Q(d)(1). Under the present rule, state plans are not required to be submitted until mid-2022 and the states have the authority to determine their sources' compliance schedule; compliance schedules are generally expected to last 24 months (*i.e.,* until mid-2024), but could in some instances be longer, as noted in preamble section

[210] Full capture is considered to occur when 100 percent of the flue gas is treated, resulting in a 90 percent reduction in emissions of CO2 relative to a power plant without carbon capture.

[211] ''Cost and Performance Baseline for Fossil Energy Plants Supplement: Sensitivity to CO2 Capture Rate in Coal-Fired Power Plants,'' une 22, 2015; DOE/NETL–2015/1720 *https://www.netl.doe.gov/projects/files/[FRDoc.SupplementSensitivitytoCO2CaptureRatein[FRDoc.CoalFiredPowerPlants_062215.pdf.*

[212] A CCS system requires both auxiliary steam and electricity to operate. According to NETL, a full capture system consumes 53 MW of direct electrical load and steam that could have otherwise been used to generate approximately 86 MW of electricity.

[213] *https://www.netl.doe.gov/energy-analysis/details?id=2949.*

[214] Existing coal-fired power plants have generally already paid off the initial construction (*i.e.,* capital) expenses.

[215] Variable operating costs represent approximately $15/MWh and the remaining costs are recovered capital over a 30-year period. The capital costs assume the power plant can recover the costs over 30 years. If the actual remaining useful life of the power plant itself is less, the costs would be higher because the capital would have to be recovered over a shorter time period. The average age of the remaining coal fleet is approximately 42 years, and the average age of retirement for coal-fired power plants is currently 54 years (*http://www.americaspower.org/wp-content/uploads/2018/03/Coal-Facts-August-31-2018.pdf*). Therefore, a significant portion of the existing coal-fired will likely retire in less than 30 years.

[216] *https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a.*

[217] *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=8-AEO2019&cases=ref2019&sourcekey=0.*

[218] ''Cost and Performance Baseline for Fossil Energy Plants Supplement: Sensitivity to CO_2 Capture Rate in Coal-Fired Power Plants,'' June 22, 2015; DOE/NETL–2015/1720.

[219] The EPA discussed the government funding and the EOR revenue from the transport of captured CO_2 to the Hilcorp's West Ranch Oil Field in ''Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units,'' 80 FR 64510, 64551 (October 23, 2015).

[220] EPA–HQ–OAR–2017–0355–24266 at 18.

III.F.1.a.(2).[221] In order for sources to implement CCS and be able to rely on the 45Q tax credit, they would have to complete all planning, including arranging all financing, preconstruction permitting, and commence construction within about 18 months (by December 31, 2023) of the state plan submittal. The EPA considers that timetable to be impracticably short for most sources, considering the complexity of implementation of CCS. In addition, the tax credit is, in general, available only for the 12-year period beginning on the date the equipment is originally placed in service. IRC section 45Q(a)(3)–(4). Thus, it would not be available to offset much of the capital costs of the CCS systems that are recovered over a 30-year period.[222] Further, like any federal income tax credit, the 45Q tax credits do not provide a benefit to a company that does not owe federal income tax, and thus it may not benefit some coal-fired power plant owners. Accordingly, the 45Q tax credits cannot be considered to offset the high costs of CCS for the industry as a whole. While nearby EOR opportunities are available for some EGUs, they alone cannot offset the high costs of CCS, as is evident from the comments discussed above.

In addition, nearby EOR opportunities are not available for many EGUs, which, as a result, would incur higher costs for constructing and operating pipelines to transport CO_2 long distances. Throughout the country, 29 states are identified as having oil reservoirs amenable to EOR, of which only 12 states have active EOR operations.[223] The vast majority of EOR is conducted in oil reservoirs in the Permian Basin, which extends through southwest Texas and southeast New Mexico. States where EOR is utilized include Alabama, Arkansas, Colorado, Louisiana, Michigan, Mississippi, Montana, New Mexico, Oklahoma, Texas, Utah, and Wyoming, whereas coal-fired generation capacity is located across the country.[224] For example, Georgia, Minnesota, Missouri, Nevada, North Carolina, South Carolina, and Wisconsin have coal-fired generation capacity but do not have oil reservoirs that have been identified as amenable for EOR. In addition, some of the states with the largest amounts of coal-fired generation capacity have no active EOR operations, including Illinois, Indiana, Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. Even in states that are identified as having potential oil and gas storage capacity, the amount of storage resource varies by state. In some states, the total oil and gas storage resource is smaller than the annual energy-related CO_2 emissions from coal, including Indiana and Virginia.[225] The limited geographic availability of EOR, and the consequent high costs of CCS for much of the coal fleet, by itself means that CCS cannot be considered to be available across the existing coal fleet.

The high costs of CCS inform the Administrator's determination that this technology is not BSER. Some commenters have suggested that CCS be treated as BSER for some facilities on a unit-by-unit basis, but the EPA believes that this would be inconsistent with its role under section 111(a)(1) to determine as a general matter what is the BSER that has been adequately demonstrated, taking into account, among other factors, cost. To treat CCS as BSER for a handful of facilities would result in those facilities becoming subject to high costs from CCS—potentially much higher than those imposed on other facilities for whom CCS is not treated as BSER. This potential disparate impact of costs is inconsistent with the Administrator's role in determining BSER and is another reason why the Administrator is finalizing a determination that CCS is not BSER.

Nevertheless, while many commenters argued that CCS should not be considered part of the BSER, they supported its use as a potential compliance option for meeting an individual unit's standard of performance. The EPA agrees with this assessment. Evaluation of the technical feasibility (*e.g.,* space considerations, integration issues, *etc.*) and the economic viability (*e.g.,* the prospects and availability of long-term contractual arrangements for sale of captured CO_2, the cost of constructing a CO_2 pipeline, the availability of tax credits, *etc.*) of a CCS project is heavily dependent on source-specific characteristics. Accordingly, state plans may authorize such projects for compliance with this rule.

F. State Plan Development

1. Establishing Standards of Performance

CAA sections 111(d)(1) and 111(a)(1) collectively establish and define certain roles and responsibilities for the EPA and the states. As discussed in section III.B above, the EPA has the authority and responsibility to determine the BSER. CAA section 111(d)(1) clearly contemplates that states will submit plans that establish standards of performance for designated facilities (*i.e.,* existing sources).

States have broad flexibility in setting standards of performance for designated facilities. However, there is a fundamental obligation under CAA section 111(d) that standards of performance reflect the degree of emission limitation achievable through the application of the BSER, which derives from the definition for purposes of section 111 of ''standard of performance'' in those terms, with no distinction made between new-source and existing-source standards. In establishing such standards of performance, the statute expressly provides that states may consider a source's remaining useful life and other factors. Accordingly, based on both the mandatory and discretionary aspects of CAA section 111(d), a certain level of process is required of state plans: Namely, they must demonstrate the application of the BSER in establishing a standard of performance, and if the state chooses, the consideration of remaining useful life and other factors in applying a standard of performance to a designated facility. The EPA anticipates that states can correspondingly establish standards of performance by performing two sequential steps, or alternatively, as further described later in this section, by performing these two steps simultaneously. The two steps to establish standards of performance are: (1) Reflect the degree of emission limitation achievable through application of the BSER, and, if the state chooses, (2) consider the remaining useful life and other source-specific factors.

[221] By comparison, the implementation period for the CPP began three years after the state plan submittal. *See* 80 FR at 64669.

[222] The NETL Pulverized Coal Carbon Capture Retrofit Database tool (April 2019) defaults to a capital recovery factor based on 30 years. Capital recovery factors based on 10 and 20 years are also selectable. If shorter periods are selected, the $/MWh for capital recovery would be higher. Table 10–12 of The Integrated Planning Model (version 6) uses a 15-year capital recovery factor for environmental retrofits, *https://www.epa.gov/sites/production/files/2019-03/documents/chapter_10.pdf.* Recovering costs over a 12-year period, as opposed to a 30-year period, increased the capital recovery factor by 40 percent.

[223] The United States 2012 Carbon Utilization and Storage Atlas, Fourth Edition, U.S. Department of Energy, Office of Fossil Energy, National Energy Technology Laboratory (NETL) and EPA Greenhouse Gas Reporting Program, *see https://www.epa.gov/ghgreporting.*

[224] U.S. Energy Information Administration, Electric Power Annual 2017, *see https://www.eia.gov/electricity/annual/pdf/epa.pdf.*

[225] The United States 2012 Carbon Utilization and Storage Atlas, Fourth Edition, U.S. Department of Energy, Office of Fossil Energy, National Energy Technology Laboratory (NETL) and U.S. Energy Information Administration, Energy-Related Carbon Dioxide Emissions by State, 2005–2016, *see https://www.eia.gov/environment/emissions/state/analysis/.*

If a state chooses to develop standards of performance through a sequential (*i.e.,* two step) process, the state would as the first step apply the BSER to a designated facility's emission performance (*e.g.,* the average emission rate from the previous three years or a projected emission rate under specific conditions such as load) and calculate the resulting emission rate. In this step, states fulfill the obligation that standards of performance reflect the degree of emission limitation achievable by evaluating the applicability of each of the candidate technologies that comprise the BSER to a specific designated facility and calculating a corresponding standard of performance based on the application of all candidate technologies that the state determines are applicable to the specific designated facility. A state may determine the most appropriate methodology to calculate a standard of performance (which for purposes of this regulation will be in the form of an emission rate, as further described in section III.F.1.c. of this preamble) by applying the BSER to a designated facility based on the characteristics of the specific source (*e.g.,* load assumptions and compliance timelines). For example, a state can start with the average emission rate of a particular designated facility and adjust it to reflect the application of each candidate technology and the associated emission rate reduction.

As the second step, under this two-step, sequential process approach, after the state calculates the emission rate that reflects application of the BSER, the state may adjust that rate by considering the remaining useful life of the designated facility and other source-specific factors. It should be noted that the state is not required to take this second step and consider remaining useful life and other factors. Rather, the state has the discretion to do so. A discussion on how a state can consider remaining useful life and other factors, if it so chooses, can be found in section III.F.1.b. below. States also have the discretion to apply a specific standard of performance to a group of existing sources within their jurisdiction, or to all existing sources within their jurisdiction.

As just described, the EPA believes it would be reasonable for states to follow a sequential two-step process to establish standards of performance. However, a state may develop its own process for calculating standards of performance outside of this two-step process, such as a hybridized approach which blends the two sequential steps into one combined step, so long as the state plan submission demonstrates application of the BSER in determining each standard of performance, (*i.e.,* evaluation of applicability of each and all candidate technologies to each designated facility). For example, if a state determines that the designated facility is able to implement only four of the six candidate technologies (due to the remaining useful life or other factors), the state is required to demonstrate in its plan submission that it in fact considered the two remaining candidate technologies in making this determination.

For the two-step approach, a state could do this by explaining in its plan submission that it considered the application of each of the candidate technologies in the first instance, but in the second step the state determined that the two candidate technologies should not be part of the methodology to calculate the EGU's standard of performance because of remaining useful life or other factors. The state should additionally provide a rationale for why and how it considered remaining useful life and other factors to discount a particular candidate technology from the calculation of a standard of performance (*e.g.,* by explaining that such technology has already been implemented by a particular source).

For a hybridized approach, when the state is applying the BSER and determining the emission reductions associated with the candidate technologies for a specific designated facility, it may be readily apparent that two of the candidate technologies are not reasonable to install because, for example, those technologies have recently been updated at the unit, independent of this final rule. This hybridized approach, which blends application of the BSER and associated stringency with consideration of remaining useful life and other factors in one step to calculate a standard of performance, may be appropriate provided that the state plan clearly demonstrates the standard of performance (expressed as a degree of emission limitation) that would result from application of the BSER and provides a rationale for why and how remaining useful life and other factors were considered to discount a particular candidate technology from the calculation of a standard of performance. This is one illustrative way in which states can demonstrate, in establishing a standard of performance, that they have both fulfilled their obligation to apply the degree of emission limitation achievable through the BSER to each designated facility and also properly invoked their discretion in considering remaining useful life and other factors.

In this section of the preamble, the EPA addresses discrete aspects of the standard-setting process. It is intended to provide states clarity and direction on each of these aspects to assist the states in developing standards of performance. The EPA is not requiring a specific method for states to develop standards of performance.

a. Application of the BSER

As described in other parts of this section, while the EPA's role is to determine the BSER, CAA section 111(d)(1) squarely places the responsibility of establishing a standard of performance for an existing designated facility on the state as part of developing a state plan. This final rule requires states to evaluate the applicability of each of the candidate technologies (HRI measures) that the EPA has determined constitute the BSER in establishing a standard of performance for each designated facility within their jurisdiction. The BSER is a list of candidate technologies that are HRI measures, which states will evaluate and apply to existing sources, establishing a standard of performance that is appropriately tailored to each existing source.[226] In establishing a standard of performance, a state may consider remaining useful life and other factors as appropriate based upon the specific characteristics of those units. In general, the EPA envisions that the states would set standards based on considerations most appropriate to individual sources or groups of sources (*e.g.,* subcategories). These may include consideration of historical emission rates, effect of potential HRIs (informed by the information in the EPA's candidate technologies described earlier in section III.E), or changes in operation of the units, among other factors the state believes are relevant. As such, states have considerable flexibility in determining standards of performance for units, as contemplated by the express statutory text.

States have discretion to apply the same standard of performance to groups of existing sources within their jurisdiction, as long as they provide a sufficient explanation for this choice and a demonstration that this approach will result in standards of performance achievable at the sources. But states also

[226] Because the candidate technologies that comprise the BSER can, at least in some cases, be applied in combination at an individual source, states should evaluate both individual candidate technologies and combinations of candidate technologies to appropriately establish standards of performance.

have discretion, expressly conferred on them by Congress in CAA section 111(d), to take into account a source's remaining useful life and other factors when establishing a standard of performance of that source, and much of the discussion in this final rule relates to the nature of that discretion and the factors that should influence states' exercise of it. As the EPA described in the proposal and as commenters have verified, the fleet of coal-fired EGUs is diverse and each EGU has been designed and engineered uniquely to fit the need at the time of construction. Because each coal-fired steam boiler subject to this rule has been designed, maintained, utilized, and upgraded uniquely, each designated facility has a unique set of circumstances with a set of source-specific factors governing its use. The outgrowth of the abundance of source-specific factors has led the EPA to determine that a tailored standard of performance (developed by states) that considers those factors can achieve emission reductions in the fleet without making broad assumptions about the fleet that may not be applicable to a particular unit. The source-specific circumstances at each EGU causes considerable variation in average emission rates across the fleet. If a single standard of performance (*i.e.,* a single degree of emission limitation resulting from a particular technology or fixed set of technologies) were to be applied to the entire fleet, the result could be either that a large portion of the fleet would not be required to achieve any meaningful emission reductions, or a large portion of the fleet would face overly stringent requirements. The goal of these emission guidelines is not to burden or shut down coal-fired EGUs—which could compromise the stability of the power sector and thus energy reliability to consumers, concerns which the EPA expresses, informed by, among other factors, Congress's direction to take into account energy requirements in determining BSER—as coal-fired EGUs still have considerable viability as part of the power sector.

When states apply the BSER's candidate technologies to a designated facility, the application of each technology and the associated degree of emission limitation achievable by such application will entail source-specific determinations. For this reason, in Table 1, the EPA provided the degree of emission limitation achievable through application of the BSER in the form of ranges, which capture the reductions and costs that the EPA expects to approximate the outcome of the application. The degree of emission limitation achievable through application of the BSER (*i.e.,* the ranges of improvements in Table 1) should be used by the states in establishing a standard of performance; however, the standard of performance calculated for a specific designated facility may ultimately reflect a degree of emission limitation achievable through application of the BSER outside of the EPA's ranges because of consideration of source-specific factors. If a state uses the sequential two-step process to establish a standard of performance, in the first step the EPA expects that the state will use the range of improvements for each candidate technology (and combinations thereof where technically feasible) to develop a standard of performance for a designated facility (the range of costs can be used in the second step which considers the remaining useful life and other factors as discussed in section III.F.1.b.). The ranges of HRI in section III.E are typical of an EGU operating under normal conditions. While a source with typical operating conditions (assuming no consideration of remaining useful life or other factors) will have a standard of performance with an expected improvement in performance within the ranges in Table 1, there may be source-specific conditions that cause the actual HRI of the applied candidate technology to fall outside the range. For example, if a designated facility had installed a new boiler feed pump just prior to a state's evaluation of the designated facility, the application of that candidate technology would yield negligible improvement in the heat rate and thus the value would fall outside the ranges provided by the EPA (*i.e.,* because the technology has already been applied and the baseline emission rate reflects that). As with the application of all the candidate technologies, the state plan submission must identify: (1) The value of HRI (*i.e.,* the degree of emission limitation achievable through application of the BSER) for the standard of performance established for each designated facility; (2) the calculation/methodology used to derive such value; and (3) any relevant explanation of the calculation that can help the EPA to assess the plan. In explaining the value of HRI that has been calculated, if the value of the HRI falls within the range identified by the EPA for a particular candidate technology, a state may note as such as part of its explanation. If a resulting value of HRI falls outside the range provided by the EPA, the state should in its state plan submission explain why this is the case based on application of the candidate technology to a particular source. In any instance, the state plan submission must identify the value of HRI that has been calculated and the calculation used to derive the value of HRI, and explain both. The states will thus use the information provided by the EPA, but will be expected to conduct source-specific evaluations of HRI potential, technical feasibility, and applicability for each of the BSER candidate technologies. After a state applies the candidate technologies to a designated facility (*i.e.,* step one), it can consider the remaining useful life and other factors associated with the source and determine whether it is cost-reasonable to actually implement that technology at the source (*i.e.,* step two). This is described in detail below in section III.F.1.b.

The approach to require states to tailor standards of performance for designated facilities is both consistent with the framework of cooperative-federalism envisioned under CAA section 111(d), and the new implementing regulations for CAA section 111(d).[227] The new implementing regulations at40 CFR 60.21a(e) and 60.22a(b)(2) and (4) require emission guidelines to reflect, and contain information on, the degree of emission limitation achievable through the application of the BSER. By providing the BSER and the associated level of stringency in the form of HRIs and associated range of heat rate improvements, the EPA is thus meeting applicable statutory and regulatory requirements and is giving states the necessary information and direction to establish standards of performance for existing sources that reflect the degree of emission limitation achievable through application of the BSER.[228]

(1) Variable Emission Performance

The Agency received comments that there is considerable variation in emissions between designated facilities within the industry, as well as considerable variation of emissions for individual units based on the operating conditions. Commenters expressed concern that the degree of emission limitation achievable through the application of the BSER is similar to the

[227] *See* 83 FR 44746.

[228] By providing the BSER and level of stringency associated with the BSER, ACE meets the applicable requirements of the new implementing regulations at 40 CFR part 60, subpart Ba, regarding the contents of an emission guideline. An ''emission guideline'' is defined under 40 CFR 60.21a(e) as a ''final guideline document'' which must contain certain items enumerated under 40 CFR 60.22a. The preamble, regulatory text, and record for ACE comprise the ''final guideline document'' referenced as the emission guideline.

magnitude in the variation in the emission rate at a specific EGU due to different operating conditions (*e.g.,* the operating load of the EGU). Commenters contend that because of this similarity, a designated facility could fall out of compliance with its standard of performance if its operating conditions change despite the source's having installed/applied all of the candidate technologies.

Commenters further stated that oftentimes the operation of a designated facility is not in the control of the owner/operator when it goes to load and cycling, and because of that the emission rate varies based on circumstances that are outside of the designated facility's control. The commenters further state that they should not be held accountable to standards that are not reflective of this lack of control and variability. The EPA acknowledges commenters' concerns about variability among designated facilities and variability of emission performance at an individual designated facility, and believes the flexibilities provided for states in establishing standards of performance, as described in this section, are sufficient to accommodate these variables. In establishing standards of performance, states can consider the two distinct types of variable emission performance [229] (*i.e.,* variation between different facilities and variation of emissions at one facility at different times) and states can tailor standards of performance accordingly.

First, standards of performance should acknowledge and reflect variability across EGUs due to unit-specific characteristics and factors, including, but not limited to, boiler-type, size, *etc.* By allowing states to establish standards of performance for individual designated facilities (in accordance with the statute's text and structure which provides that states in their plans shall establish standards of performance for existing sources), the EPA expects that standards of performance will inherently account for unit-specific characteristics.[230] By applying the BSER to individual designated facilities within the state, standards of performance would account for unit-specific characteristics such as unit design, historical operation and maintenance. As further described in section III.F.1.b, states may also account for anticipated future design and/or operating plans—such as plans to operate as baseload or load following electricity generators.

Second, standards of performance should reflect variability in emission performance at an individual designated facility due to changes in operating conditions. Specifically, the agency believes it would be appropriate for states to identify key factors that influence unit-level emission performance (*e.g.,* load, maintenance schedules, and weather) and to establish emission standards that vary in accordance with those factors. In other words, states could establish standards of performance for an individual EGU that vary (*i.e.,* differ) as factors underlying emission performance vary. For example, states could identify load segments (ranges of EGU load operation) that reflect consistent emission performance within the segment and varying emission performance between segments. States could then establish standards of performance for an EGU that differ by load segment.

Another possible option to account for variable emissions is to set standards of performance based on a standard set of conditions. A state could establish a baseline of performance of a unit at specific load and operational conditions and then set a standard against those conditions via the application of the BSER. Compliance for the unit could be demonstrated annually (or by another increment of time if appropriate based on the level of stringency of the standard of performance set for the unit) at those same conditions. In the interim, between the demonstration of compliance under standardized conditions, a state could allow for the maintenance and demonstration of fully operational candidate technologies to be a method to demonstrate compliance as the standard of performance must apply at all times.

The Agency believes that these approaches to providing flexibility (and possible others not described here) in establishing standards of performance are reasonable and appropriate by accounting for innate variable emission performance across EGUs and at specific EGUs while also limiting this flexibility to instances in which underlying variable factors are evaluated and linked to variable emission performance.

(2) Compliance Timelines

Additionally, the new implementing regulations require that emission guidelines identify information such as a timeline for compliance with standards of performance that reflect the application of the BSER.[231] However, given the source-specific nature of these emission guidelines and the reasonably anticipated variation between standards established for sources within a state, the EPA believes it more appropriate that a state establish tailored compliance deadlines for its sources based on the standard ultimately determined for each source. Accordingly, the EPA is superseding this aspect of 40 CFR 60.22a for purposes of ACE, as allowed under the applicability provision in the new implementing regulations under 60.20a and allowing for states to include an appropriate compliance deadline for each designated facility based on its standard of performance determined as part of the state plan process. It is important that states consider compliance timelines that are consistent with the application of the BSER to ensure that the compliance timeline does not undermine the BSER determination made by the EPA. For most states, the EPA anticipates initial compliance to be achieved by sources within twenty-four months of the state plan submittal. If a state chooses to include a compliance schedule (because of source-specific factors) for a source that extends more than twenty-four months from the submittal of the state plan, the plan must also include legally enforceable increments of progress for that source [232]). The EPA does not envision that most states will be using increments of progress leading up to initial compliance. However, as with the consideration of other source-specific factors, where a state does choose to provide for a source to comply on a longer timeframe than twenty-four months and to employ legally enforceable increments of progress

[229] In this context, variable emission performance is a result of underlying variability in heat rate, as emissions of CO_2 from EGUs are proportional to the unit's heat rate performance.

[230] Note that for administrative efficiency in developing a state plan, a state may be able to calculate a uniform standard of performance that reflects application of the BSER for a group of designated facilities rather than performing the same calculation multiple times for multiple individual sources if the group of sources has similar characteristics such that application of BSER would be consistent between the EGUs. This final rule does not necessarily require a state to provide a discrete calculation and separate standard of performance for each designated facility within a group of similar designated facilities, but if a state chooses to calculate a uniform rate for such a group of sources the plan submission should explain how the uniform rate reflects application of the BSER for all of the units in the group (*e.g.,* because of similar operating characteristics). Additionally, even if the same emission rate is calculated for designated facilities at different facilities that are included in such a group, such standard is applicable to each individual designated facility, and each source would be required to meet that standard by implementing ACE requirements separately, consistent with the state plan requirements described in section III.F.2 of this rule.

[231] *See* 40 CFR 60.22a.

[232] *See* 40 CFR 60.24a(d).

along the way, the state should include in its state plan submission to the EPA an adequate justification for why that approach is warranted. The level of stringency can be compromised if a compliance schedule does not adequately reflect the BSER determination.

Several commenters requested clarity on when standards of performance must become effective (*i.e.,* when must designated facilities comply with their standards of performance) once a state plan has been submitted but not yet approved by the EPA. The contents of a state plan submission, such as standards of performance and related requirements, are not effective or enforceable under federal law until they are approved by the EPA. However, state plan requirements must be fully adopted as a matter of state law, or issued as a permit, order, or consent agreement, before the plan is submitted to the EPA (and therefore could be enforceable as a matter of state law, depending on when the state has chosen to make such requirements effective).[233] The EPA anticipates that in determining an appropriate compliance schedule (and more specifically the initial compliance) for designated facilities, a state will consider the anticipated timing of review of the state's plan by the EPA and what sources may need to do in the interim in order to assure ultimate compliance with their standards of performance while EPA is in the process of reviewing the plan.

States also have discretion in establishing a compliance schedule for designated facilities, but the Agency urges states to use caution as to not undermine the BSER by the determined schedules. Most programs under CAA section 111 do not have compliance timelines greater than a year and the Agency believes that is a good indicator for states to take into consideration determining compliances schedules. Much of how a compliance schedule is structured can be based on how the standard of performance is structured. In section III.F.1.a.(1) there is a discussion about how a state might account for variable emissions. One of the options is to set a standard of performance under standardized conditions to take into account many of the factors that can lead to variable emissions from a designated facility. The standardized conditions (*e.g.,* load, ambient temperature, humidity *etc.*) that apply to the standard of performance must also be met when there is a compliance demonstration. Because these standardized conditions are not maintained throughout a compliance period, the segmented nature of demonstrating compliance could mirror the compliance schedule. For example, a designated facility could have a monthly demonstration under standardized conditions that mirrors a monthly compliance schedule. This is one example to illustrate how a standard of performance can align with a compliance schedule.

Another consideration for states in establishing standards of performance is the emission averaging time (*e.g.,* the amount of time that a designated facility may average its emission rate). As described above in section III.F.1.a.(1), EGUs may have considerably variable emissions due to numerous operating factors. A method to account for seasonal variability is to average a designated facility's emission rate over the course of multiple seasons.

b. Consideration of Remaining Useful Life and Other Factors

CAA section 111(d) requires, in part, that the EPA ''shall permit the State in applying a standard of performance to any particular source under a plan submitted under [CAA section 111(d)] to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.'' Consistent with the requirements of this provision, the EPA is permitting states to consider remaining useful life and other factors in establishing a standard of performance for a particular source in this final rule. States may do this in several ways. If a state is following the sequential two-step process, the state would first apply all of the candidate technologies to a designated facility to derive a standard of performance with consideration to the EGU's historical or projected performance, as previously described in section III.F.1.a. In the second step of this process, the state would consider the ''remaining useful life and other factors'' for the EGU and develop a standard of performance accordingly. It should be noted that the consideration of remaining useful life and other factors is a discretionary step for states. If a state were to establish a standard of performance for a designated facility based solely on the application of the BSER, it would be reasonable to do so and not precluded under the statute.

The CAA explicitly provided under CAA section 111(d)(1) that states could, under appropriate circumstances, establish standards of performance that are less stringent than the standard that would result from a direct application of the BSER identified by the EPA. CAA section 111(d)(1) achieves this goal by authorizing a state, in applying a standard of performance, to take into account a source's remaining useful life and other source-specific factors. As such, the EPA is promulgating, as part of the new implementing regulations at 40 CFR 60.20a-29a, a provision to permit states to take into account remaining useful life, among other factors, in establishing a standard of performance for a particular designated facility, consistent with CAA section 111(d)(1)(B). The new implementing regulations (also consistent with the previous implementing regulations) give meaning to CAA section 111(d)(1)(B)'s reference to ''other factors'' by identifying the following as a nonexclusive list of several factors states may consider in establishing a standard of performances:

- Unreasonable cost of control resulting from plant age, location, or basic process design;
- Physical impossibility of installing necessary control equipment; or
- Other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable.

Given that there are unique attributes and aspects of each designated facility, there are important factors that influence decisions to invest in technologies to meet a potential standard of performance. These include factors not enumerated in the list provided above, including timing considerations like expected life of the source, payback period for investments, the timing of regulatory requirements, and other source-specific criteria. The state may find that there are space or other physical barriers to implementing certain HRIs at specific units. Alternatively, the state may find that some HRI options are either not applicable or have already been implemented at certain units. The EPA understands that many of these ''other factors'' that can affect the application of the BSER candidate technologies distill down to a consideration of cost. Applying a specific candidate technology at a designated facility can be a unit-by-unit determination that weighs the value of both the cost of installation and the CO_2 reductions.

The EPA received comment on the ACE proposal that the EPA should provide more information and guidance for what could be considered ''other factors'' in addition to the considerations of the remaining useful life. In addition, commenters also requested more information on the remaining useful life and other source-

[233] 40 CFR 60.23a, 60.27a(g)(2)(iii).

specific factors that could be considered in developing a standard of performance. The EPA acknowledges that there are a host of things that could be considered ''other factors'' by states that can be used to develop a standard of performance. While the EPA cannot identify every set of circumstances and factors that a state could consider, the EPA agrees with the commenters that it would be helpful for states if the EPA were to provide a non-exhaustive set of qualitative examples that states could consider in developing standards of performance as described below. The EPA will evaluate each standard of performance and the factors that were considered in the development of the standard of performance on a case by case basis. The state should include all of the factors and how the factors were applied for each standard of performance in the state plan. The EPA received many notable comments that states would like more direction and assistance in developing standards of performance. The examples are intended to help provide this assistance, but the EPA also understands that, because there are so many considerations for each source, states might have further questions while developing plans. States are encouraged to reach out to the Agency during the development of plans for further assistance.

As noted above, the consideration of the remaining useful life and other factors most often is a reflection of cost. When the EPA determines the BSER for a source category, the EPA typically considers factors such as cost relative to assumptions about a typical unit. Because the costs evaluated for the BSER determination are relative to a typical unit, the source-specific conditions of any particular existing designated facility that a state will evaluate in developing its plan under CAA section 111(d) are not inherently considered. A state's consideration of the remaining useful life and other factors will reflect the costs associated with the source-specific conditions. As part of the BSER determination, the EPA has provided a range of costs associated with each candidate technology (*see* Table 1). These costs are provided to serve as an indicator for states to determine whether it is cost-reasonable for the candidate technology to be installed. These cost ranges are certainly not intended to be presumptive (*i.e.,* the ranges are not an accurate representation for each designated facility and should not be used without a justified analysis by the state), but rather are provided as guide-posts to states. If a state considers the remaining useful life and/or other factors in determining a standard of performance, the state is required to describe, justify, and quantify how the considerations were made in its plan. Because these considerations are discretionary and source-specific, the burden is on the state in its plan to demonstrate and justify how they were taken into account.

A state might consider the remaining useful life of a designated facility with a retirement date in the near future by a number of ways in the standard setting process. One way that a state may take into account this circumstance is in applying the BSER (either through the sequential, two-step process or through some other method that reflects application of the BSER), establish a standard that ultimately only applies the less costly BSER technologies in the development of the standard of performance that the state establishes for the particular designated facility. The shorter life of the designated facility will generally increase the cost of control because the time to amortize capital costs is less. Another outcome of a state's evaluation of a designated facility's remaining useful life may lead to the state setting a ''business as usual'' standard. This could be an appropriate outcome where the remaining useful life of the designated facility is so short that imposing any costs on the EGU is unreasonable. Because a state plan must establish standards of performance for ''any'' designated facility under CAA section 111(d), the standard applied to this designated facility would reflect ''business as usual'' and require the unit to perform at its current level of efficiency during the remainder of its useful life. Under all of these examples and under any other circumstance in which a state considers remaining useful life or other factors in establishing a standard of performance, the state must describe in its state plan submission such consideration and ensure it has established a standard for every designated facility within the state, even one with an anticipated near-term retirement date.

Another consideration for a state in setting standards of performance with consideration to the remaining useful life and other factors is how the different candidate technologies interact with one another and how they interact with the current system at a designated facility. Commenters have expressed, and the EPA agrees, that the application of efficiency upgrades at EGUs are not necessarily additive. Installing HRI technologies in parallel with one another may mitigate the effects of one or more of the technologies. While states must apply the BSER and the degree of emission limitation achievable through such application in calculating a standard of performance, states may also consider the mitigating effects on the emission reductions that would result from the installation of a particular candidate technology, and may as a result of this consideration determine that installing that particular candidate technology at a particular source is not reasonable. This consideration is authorized as one of the ''other factors'' that states may consider in establishing a standard of performance under CAA section 111(d)(1) and the new implementing regulations under 40 CFR 60.24a(e).

A prime example of an ''other factor'' is ruling out the reapplication of a candidate technology. The EPA anticipates this to be a part of many state plans. In this scenario, a designated facility recently applied one of the candidate technologies prior to the time ACE becomes applicable. To require that designated facility to update that candidate technology again, as a result of ACE, would not be reasonable because the costs will be significant with marginal, if any, heat rate improvement.

As described in section III.F.1.c., states are obligated to set rate-based standards of performance. These will generally be in the form of the mass of carbon dioxide emitted per unit of energy (for example pounds of CO_2 per megawatt-hour or lb/MWh). The emission rate can be expressed as either a *net* output-based standard or as a *gross* output-based standard, and states have the discretion to set standards of performance in either form. The difference between net and gross generation is the electricity used at a plant to operate auxiliary equipment such as fans, pumps, motors, and pollution control devices. The gross generation is the total energy produced, while the net generation is the total energy produced minus the energy needed to operate the auxiliary equipment.

Most of the candidate technologies, when applied, affect the gross generation efficiency. However, some candidate technologies, namely improved or new variable frequency drives and improved or new boiler feed pumps, improve the net generation by reducing the auxiliary power requirement. Because improvements in the efficiency of these devices represent opportunities to reduce carbon intensity at existing affected EGUs that would not be captured in measurements of emissions per gross MWh, states may

want to consider standards expressed in terms of net generation. If a state chooses to set standards in the form of *gross* energy output, it will be up to the state to determine and demonstrate how to account for emission reductions that are achieved through measures that only affect the *net* energy output.

One of the more significant changes between the ACE proposal and this action is that the EPA is not finalizing the NSR reforms that it proposed in the same document that it proposed ACE. While the EPA intends to take final action on the NSR reform at a later time in a separate action, the consequences of that action are no longer considered in parallel with ACE. Two of the candidate technologies, blade path upgrades and a redesigned/replaced economizer, were proposed as part of the BSER considering that NSR would not be a barrier for installation. Under ACE as finalized without parallel NSR reforms, the EPA anticipates that states may take into account costs associated with NSR as a source-specific factor in considering whether these two technologies are reasonable. While the EPA believes that states are more likely to determine that blade path upgrades and redesigned/replaced economizers are not as reasonable as anticipated at proposal when these were proposed as elements of BSER alongside proposed NSR reforms, as discussed above, the EPA is still finalizing a determination that these candidate technologies are elements of the BSER because it still expects these technologies to be generally applicable across the fleet of existing EGUs, and because the costs of the technologies themselves are generally economical and reasonable. In any case, under ACE as finalized, states are required to evaluate the applicability of all candidate technologies (*i.e.,* the BSER) to a particular existing source when establishing a standard of performance for that source.

c. Forms of Standards of Performance

While the EPA is allowing broad flexibility for states in establishing standards of performance for designated facilities, the EPA is finalizing a requirement that all standards of performance be in the form of an allowable emission rate (*i.e.,* rate-based standard in, for example, lb CO_2/MWh-gross). As described in the proposal an allowable emission rate is the form that corresponds to the EPA's BSER determination for these emission guidelines. When HRIs are made at an EGU, by definition, the CO_2 emission rate will decrease as described above in section III.E. There is a natural correlation between the BSER and an allowable emission rate as the standard of performance in this action. Also, by the Agency prescribing that only a singular form of standard (*i.e.,* an allowable emission rate) is acceptable, it will promote continuity among states and power companies, prevent ambiguity, and promote simplicity and ease of administration and avoid undue burden on the states and regulated parties.

The EPA received considerable comment that it should allow mass-based standards of performance. While the EPA understands the appeal of a mass-based standard for some stakeholders, this form of standard is not compatible with the EPA's BSER determination. In fact, the EPA believes that a mass-based standard would undermine the EPA's BSER. If designated facilities were to have mass-based standards, it is likely that many would meet their compliance obligation by reduced utilization. A standard of performance that incentivizes reduced utilization and possibly retirements does not reflect application of the BSER. See section II.B above for a discussion of reduced utilization and CAA section 111.

Additionally, given that the EPA has the obligation under CAA section 111(d)(2) to determine whether state plans are ''satisfactory,'' certain programmatic bounds are appropriate to facilitate the state's submission of, and EPA's review of, the approvability of state plans. Having a uniform type of standard of performance will help streamline the states' development of their plans, as well as the EPA's review of those plans as there will be fewer variables to consider in the development of each standard of performance. While the Agency has experience implementing mass-based programs, the uncertainty associated with projecting a level of generation for designated facilities is unnecessary when there is a more compatible format, *i.e.,* a rate-based standard.

The EPA also notes that it is not establishing a preference or requirement for whether a rate-based standard of performance be based in gross or net heat rate. The EPA acknowledges that there are ramifications of applying the BSER to establish a standard of performance with the consideration of type of heat rate used. This may be particularly important when considering the effects of part load operations (*i.e.,* net heat rate would include inefficiencies of the air quality control system at a part load whereas gross heat rate would not). This will also be important in recognizing the improved efficiency obtained from upgrades to equipment that reduce the auxiliary power demand. The consideration of this factor is left to the discretion of the state.

2. Compliance Mechanisms

Just as states have broad flexibility and discretion in setting standards of performance for designated facilities, sources have flexibility in how they comply with those standards. To the extent that a state develops a standard of performance based on the application of the BSER for a designated facility within its jurisdiction, sources should be free to meet that standard of performance using either BSER technologies or certain non-BSER technologies or strategies. Thus, a designated facility may have broad discretion in meeting its standard of performance within the requirements of a state's plan. For example, there are technologies, methods, and/or fuels that can be adopted at the designated facility to allow the source to comply with its standard of performance that were not determined to be the BSER, but which may be applicable and prudent for specific units to use to meet their compliance obligations. Examples of non-BSER technologies and fuels include HRI technologies that were not included as candidate technologies, CCS, and natural gas co-firing. In keeping with past programs that regulated designated facilities using a standard of performance, the EPA takes no position regarding whether there may be other methods or approaches to meeting such a standard, since there are likely various approaches to meeting the standard of performance that the EPA is either unable to include as part of the BSER, or is unable to predict. The EPA is, however, excluding some measures from use as compliance measures: averaging and trading and bio-mass cofiring. These measures do not meet the criteria for compliance measures. Those criteria, which are designed to assure that compliance measures actually reduce the source's emission rate, are two-fold: (1) The compliance measures must be capable of being applied to and at the source, and (2) they must be measurable at the source using data, emissions monitoring equipment or other methods to demonstrate compliance, such that they can be easily monitored, reported, and verified at a unit.

With respect to the first criterion, the EPA believes that both legal and practical concerns weigh against the inclusion of measures that cannot qualify as a ''system of emission reduction.'' Allowing those measures would be inconsistent with the EPA's

interpretation of the BSER as limited to measures that apply at and to an individual source and reduce emissions from that source. Because state plans must establish standards of performance—which by definition [234] ''reflect[ ] . . . the application of the [BSER]''—implementation and enforcement of such standards should correspond with the approach used to set the standard in the first place. Applying an implementation approach that differs from standard-setting would result in asymmetrical regulation. Specifically, a state's implementation measures would result in a more or less stringent standard implemented at an EGU than could otherwise be derived from application of the BSER.

There are certainly methods that affected EGUs could use to meet compliance obligations that are not the BSER, but these methods still fit the two criteria: They can be applied to and at the source and can be measured at the source using data, emissions monitoring equipment or other methods to demonstrate compliance, such that they can be monitored, reported, and verified at a unit. Such examples include CCS and natural gas cofiring.

Commenters also requested that reduced utilization be an available compliance mechanism. While a designated facility reducing its utilization would certainly reduce its mass of CO_2 emissions, it would likely not lead to an improved emission rate. As noted above in section III.F.1., a state can certainly take into account a designated facility's projected decreased utilization in setting a standard of performance, but it cannot make it the means of meeting compliance obligations because the degree of emission limitation achievable through the application of the BSER must still be reflected in setting the standard of performance. See section II.B above for a discussion of reduced utilization under CAA section 111.[235]

a. Averaging and Trading

This section discusses the question of whether averaging and trading are permissible means for sources to comply with ACE. For a discussion of averaging EGU-emissions over a compliance period, see section III.F.1.a.(2). In the proposal, the EPA solicited comment on whether CAA section 111(d) authorizes states to include averaging or trading between existing sources in the plans they submit to meet the requirements of final emission guidelines.[236] Specifically, the EPA: (1) Proposed to allow states to incorporate, as part of their plan, emissions averaging among EGUs across a single plant; and (2) solicited comment on whether CAA section 111(d) should be read not to authorize states to include trading and averaging between sources.[237]

The EPA received numerous comments on the topic of averaging and trading for compliance with ACE. With respect to averaging across designated facilities that are located at the same plant—including, but not limited to, EGUs that are served by a common stack—some commenters disapproved of this flexibility while others supported the ability to implement ACE via averaging in state plans. On the topic of averaging and trading between designated facilities located at different plants, the Agency received mixed support and opposition. Some commenters suggested that the EPA's proposed prohibition on averaging and trading between designated facilities at different plants was necessary given the Agency's construction of the BSER as limited to systems that could be applied to and at the ''source'' itself. Other commenters suggested that averaging and trading for compliance with ACE is not precluded under CAA section 111(d). Commenters also suggested that the statutory cross-reference under CAA section 111(d)(1) to CAA section 110 suggests that trading could be used for implementation under ACE. Several commenters provided examples of prior CAA section 111(d) regulations in which the agency allowed trading for implementation (*e.g.,* CAMR).

In this final action, the EPA determines that: Neither (1) averaging across designated facilities located at a single plant; nor (2) averaging or trading between designated facilities located at different plants are permissible measures for a state to employ in establishing standards of performance for existing sources or for sources to employ to meet those standards. CAA section 111(d) authorizes states to establish standards of performance for ''any existing source,'' which the CAA defines as ''any stationary source other than a new source.'' [238] ''Stationary source,'' in turn, means ''any building, structure, facility, or installation which emits or may emit any air pollutant.'' [239] In the ACE proposal, the EPA explained that an EGU ''subject to regulation upon finalization of ACE is any fossil fuel-fired electric utility steam generating unit (*i.e.,* utility boilers) that is not an integrated gasification combined cycle (IGCC) unit (*i.e.,* utility boilers, but not IGCC units) that was in operation or had commenced construction as of [January 8, 2014],'' and ''serves a generator capable of selling greater than 25 MW to a utility power distribution system and has a base load rating greater than 260 GJ/h (250 MMBtu/h) heat input of fossil fuel (either alone or in combination with any other fuel).'' [240] The proposal then identified HRI measures as the BSER for such units.[241] This action finalizes the Agency's determination that HRI measures are the BSER for designated facilities. *See* sections III.C & III.E.

Although the D.C. Circuit has recognized that the EPA may have statutory authority under CAA section 111 to allow plant-wide emissions averaging,[242] the Agency's determination that individual EGUs are subject to regulation under ACE precludes the Agency from attempting to change the basic unit from an EGU to a combination of EGUs for purposes of ACE implementation.[243]

In *ASARCO,* the EPA promulgated regulations re-defining ''stationary source'' as ''any . . . *combination of* . . . facilities.'' [244] By treating a ''combination of facilities'' as a single source, the EPA intended to adopt a ''bubble concept,'' which would allow a facility to ''avoid complying with the applicable NSPS so long as emission decreases from other facilities within the same source cancel out the increases from the affected facility.'' [245] The Court concluded, however, that the Agency ''has no authority to rewrite the statute in this fashion.'' [246] In a subsequent case, the D.C. Circuit recognized that the EPA has ''broad discretion to define the statutory terms for 'source,' [*i.e.,* building, structure, facility or installation], so long as guided by a reasonable application of the statute.'' [247]

Following these two decisions, the EPA adopted a new regulation defining ''building, structure, facility, or installation'' for nonattainment-area

[234] *See* CAA section 111(a)(1)

[235] For a discussion of reduced utilization in other CAA contexts, please see ACE RTC Chapter 1, response to comment 76.

[236] *See* 83 FR 44767–768.

[237] *Id.*

[238] 42 U.S.C. 7411(a)(6).

[239] *Id.* at section 7411(a)(3).

[240] 83 FR 44754.

[241] *Id.* at 44755.

[242] *See U.S. Sugar* v. *EPA,* 830 F.3d 579, 627 n.18 (D.C. Cir. 2016) (pointing to the definition of ''stationary source'').

[243] *See, e.g., ASARCO* v. *EPA,* 578 F.2d 319, 327 (D.C. Cir. 1978).

[244] *Id.* at 326 (emphasis added).

[245] *Id.*

[246] *Id.* at 327.

[247] *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 396 (D.C. Cir. 1979).

permitting under the NSR program as ''all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel.'' [248] That rulemaking lead to the Supreme Court's decision in *Chevron* v. *NRDC,* 467 U.S. 837 (1984). In *Chevron,* the Court recognized that ''it is certainly no affront to common English usage to take a reference to a major facility or a major source to connote an entire plant as opposed to its constituent parts.'' [249]

Here, the EPA does not need to determine whether it would have been reasonable to interpret ''building, structure, facility, or installation'' as an entire plant for purposes of CAA section 111 (thus, encompassing all EGUs located at a single plant). Because ACE identifies individual EGUs as the designated facility,[250] state plans cannot accommodate any ''bubbling'' of EGUs for compliance with these emission guidelines.

In addition, as proposed, the EPA is precluding averaging or trading between designated facilities located at different plants for the following reasons.

The EPA believes that averaging or trading across designated facilities (or between designated facilities and other power plants, *e.g.,* wind turbines) is inconsistent with CAA section 111 because those options would not necessarily require any emission reductions from designated facilities and may not actually reflect application of the BSER.[251] Because state plans must establish standards of performance—which by definition ''reflects . . . the application of the best system of *emission reduction*''—implementation and enforcement of such standards should be based on improving the emissions performance of sources to which a standard of performance applies. Additionally, averaging or trading would effectively allow a state to establish standards of performance that do not reflect application of the BSER. For example, under a trading program, a single source could potentially shut down or reduce utilization to such an extent that its reduced or eliminated operation generates adequate compliance instruments for a state's remaining sources to meet their standards of performance without any emission reductions from any other source. This compliance strategy would undermine the EPA's determination of the BSER in this rule, which the EPA has determined as heat rate improvements.

In light of these concerns, as proposed, the EPA concludes that neither averaging nor trading between EGUs at different plants can be used in state plans for ACE implementation. Regarding commenters' assertions that the statutory text of CAA section 111(d) does not preclude averaging or trading, the Agency finds that the statutory text of CAA section 111(d) does not require the EPA to allow averaging or trading as a measure for states in establishing existing-source standards of performance or allow for sources to adopt as a compliance measure, and the interpretation of the limits on the scope of BSER under CAA section 111(a)(1) set forth in section II above as a basis for the repeal of the CPP suggests that those measures are not permissible, as they are not applied to a source.

Regarding commenters' assertions that the cross-reference in CAA section 111(d) to CAA section 110 authorizes averaging or trading for implementation, the Agency disagrees. The cross-reference to CAA section 110 indicates that ''[t]he Administrator shall prescribe regulations which shall establish a *procedure similar to that provided by CAA section 110* of this title under which each State shall submit to the Administrator a plan . . . .'' (emphasis added). The Agency's interpretation of this cross-reference is that it focuses on the *procedure* under which states shall submit plans to the EPA. It does not imply anything affirmative or negative about implementation mechanisms available under CAA section 111(d). In the absence of definitive instruction under this CAA provision, the Agency uses its best judgment to conclude that the meaning and scope of the BSER in this rule preclude the use of averaging or trading for covered EGUs at different plants in state plans. Commenters also asserted that the EPA has promulgated regulations under CAA section 111(d) that included trading in the past, such as CAMR. As an initial matter, CAMR was vacated by the D.C. Circuit and never implemented. Nonetheless, the Agency notes that the CAMR included trading both in the establishment of the BSER and as an available implementation mechanism. In the ACE rule, by contrast, trading was not factored into the determination of the BSER and so should not be authorized for implementation.

Moreover, it is not clear that trading would qualify as a ''system of emission reduction'' that can be applied to and at an individual source and would lead to emission reductions from that source. Indeed, the nature of trading as a compliance mechanism is such that some sources would not need to apply any pollution control techniques at all in order to comply with a cap-and-trade scheme. A compliance mechanism under which multiple sources can comply not by any measures applied to those sources individually, but instead by obtaining credits generated by measures adopted at another source, is not consistent with the interpretation of the limits on the scope of BSER adopted in section II above. Accordingly, trading is not permissible under CAA section 111.

b. Biomass Co-Firing

The ACE proposal solicited comment on the inclusion of forest-derived and non-forest biomass as non-BSER compliance options for affected units to meet state plan standards. The proposal also solicited comment on what value to

[248] 46 FR 50766.

[249] 467 U.S. at 860.

[250] Fossil fuel-fired steam generators (*i.e.,* EGUs) were among the first source categories listed under CAA section 111. *See* 36 FR 5931. Since then, the Agency has promulgated multiple rulemakings specifically regulating EGUs. *See e.g.,* 40 CFR part 60, subparts D, Da, TTTT, and UUUU. In any case, the decision to identify EGUs as the regulated source is made under CAA section 111(b); that is because regulations under CAA section 111(d) are authorized for sources ''to which a standard of performance . . . would apply if such existing source were a new source.'' In this case, new source performance standards have been established for certain ''new, modified, and reconstructed'' EGUs. 80 FR 64510. While the EPA proposed to revisit several portions of those standards, *see* 83 FR 65424, the Agency did not propose to revise the applicability requirements for them, *id.* at 65429. Accordingly, individual EGUs continue to be the appropriate regulatory target for purposes of ACE (and not, for example, multiple EGUs that may be co-located at a single power plant).

[251] The EPA's interpretation of CAA section 111 on this point has changed since the promulgation of the since-vacated CAMR and does not necessarily extend to other CAA programs and provisions, which can be distinguishable based on the applicable statutory and regulatory requirements and programmatic circumstances. For example, the EPA has implemented several trading programs under the so-called Good Neighbor provision at CAA section 110(a)(2)(D)(i)(I). *See* Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (also known as the NO_X SIP Call), 63 FR 57356 (October 27, 1998); Clean Air Interstate Rule (CAIR) Final Rule, 70 FR 25162 (May 12, 2005); Cross State Air Pollution Rule (CSAPR) Final Rule, 76 FR 48208 (August 8, 2011); CSAPR Update Final Rule, 81 FR 74504 (October 26, 2016). Section 110(a)(2)(A), which is applicable to the requirements of the Good Neighbor provision, explicitly authorizes the use of marketable permits and auctions of emission rights. Additionally, the Good Neighbor provision prohibits emissions activity in certain ''amounts'' with respect to the NAAQS. The affirmative requirement under this provision to reduce certain emissions means it is appropriate to implement measures which will result in the required emission reductions. The EPA has done so previously by implementing trading programs to reduce ozone and particulate matter, the regional-scale nature of which can be effectively regulated under a trading program.

attribute to biogenic CO_2 associated with non-forest biomass, if included. The EPA received a range of comments both supporting and opposing the use of forest-derived and non-forest biomass feedstocks for compliance under this rule. Additionally, the EPA received a range of comments regarding the valuation of CO_2 emissions from biomass combustion.

Numerous commenters supported the inclusion of biomass as a compliance measure. Some reiterated the EPA's 2018 policy statement regarding biogenic CO_2 emissions, which laid out the Agency's intent to treat biogenic CO_2 emissions from forest biomass from managed forests as carbon neutral in forthcoming Agency actions. Specifically, these commenters stated that the nature of biomass and its role in the natural carbon cycle (*i.e.,* carbon is sequestered during biomass growth that occurs offsite) makes biomass a carbon-neutral fuel, and therefore that biomass should be eligible as a compliance option under this rule. Commenters opposing the inclusion of biomass for compliance asserted that biomass combustion does not reduce stack GHGs emissions, as it emits more emissions per Btu than fossil fuels, and therefore should not be eligible for compliance. Some comments noted that the scientific rationale underlying the use of biomass as a potential GHG reduction measure at stationary sources relies primarily on terrestrial CO_2 sequestration occurring due to activities offsite (*i.e.,* activities outside of and largely not under the control of a designated facility).

The construct of this final ACE rule necessitates that measures taken to meet compliance obligations for a source actually reduce its emission rate in that: (1) They can be applied to the source itself; and (2) they are measurable at the source of emissions using data, emissions monitoring equipment or other methods to demonstrate compliance, such that they can be easily monitored, reported, and verified at a unit (see section III.F.2). While the firing of biomass occurs at a designated facility, biomass firing in and of itself does not reduce emissions of CO_2 emitted from that source. Specifically, when measuring stack emissions, biomass emits more CO_2 per Btu than fossil fuels, thereby increasing the CO_2 emission rate at the source. Accordingly, recognition of any potential CO_2 emissions reductions associated with biomass firing at a designated facility relies on accounting for activities not applied at and largely not under the control of that source (*i.e.,* activities outside of and largely unassociated with a designated facility), including consideration of terrestrial carbon effects during the biomass fuel growth. Therefore, biomass fuels do not meet the compliance obligations and are not eligible for compliance under this rule.

3. Submission of State Plans

CAA section 111(d)(1) provides that states shall submit to the EPA plans that establish standards of performance for existing sources within their jurisdiction and provide for implementation and enforcement of such standards. Under CAA section 111(d)(2), the EPA has the obligation to determine whether such plans are ''satisfactory.'' In light of the statutory text, state plans implementing ACE should include detailed information related to two key aspects of implementation: Establishing standards of performance for covered EGUs and providing measures that implement and enforce such standards.

Generally, the plans submitted by states must adequately document and demonstrate the process and underlying data used to establish standards of performance under ACE. Providing such documentation is required so that the EPA can adequately and appropriately review the plan to determine whether it is satisfactory; the EPA's authority to promulgate a federal plan is triggered in ''cases where the State fails to submit a satisfactory plan . . . .'' [252] For example, states must include data and documentation sufficient for the EPA to understand and replicate the state's calculations in applying BSER to establish standards of performance. Plans must also adequately document and demonstrate the methods employed to implement and enforce the standards of performance such that EPA can review and identify measures that assure transparent and verifiable implementation. Additionally, state plan submissions must, unless otherwise provided in a particular emissions guideline rule, adhere to the components of the new implementing regulations described in section IV. The following paragraphs discuss several components that states are required to include in their state plans as required under these final emission guidelines.

First, state plans must detail the approach or methods used by the state to apply the BSER and establish standards of performance. The state should include enough detail for the EPA to be able to reproduce the state's methods and calculations. The methodology submitted should clearly identify the approach by which states evaluate all of the HRIs finalized in this action, both alone and in combination with each other where technically feasible. To the extent that HRIs are not feasible to apply at a particular EGU, states must provide a rationale (and supporting data or metrics where relied upon) for why the calculation would be invalid or inappropriate.

Second, state plans must identify EGUs within their borders that meet the applicability requirements and are thereby considered a designated facility under ACE. Plans must also include emissions and operational data relied upon to apply BSER and determine standards of performance. These data must include, at a minimum, an inventory of CO_2 emissions data and EGU operational data (*e.g.,* heat input) for designated EGUs during the most recent calendar year for which data is available at the time of state plan development and/or submission. State plans must also include any future projections data relied upon to establish standards of performance, including future operational assumptions. To the extent that state plans consider an existing source's remaining useful life in establishing a standard of performance for that source, the state plan must specify the exact date by which the source's remaining useful life will be zero. In other words, the state must establish a standard of performance that specifies the designated facility will retire by a future date certain (*i.e.,* the date by which the EGU will no longer supply electricity to the grid). It is important to note that (as with all aspects of the state plan) the standard of performance and associated retirement date will be federally enforceable upon approval by the EPA. In the event a source's circumstances change so that this retirement date is no longer feasible, states generally have the authority and ability to revise their state plans. Such plan revisions must be adopted by the state and submitted to the EPA pursuant to the requirements of 40 CFR 60.28a.

Third, state plans should submit detailed documentation demonstrating in detail the application of the state's methodology to the state's data. In other words, states should include the calculations relied upon when applying the BSER to establish standards of performance. States should also include detailed documentation demonstrating the relied upon compliance mechanisms, consistent with section III.F.2.

Regarding establishing standards of performance and ensuring verifiable implementation for EGUs with complex

[252] CAA section 111(d)(2)(A).

stack configurations, states should include approaches (*e.g.,* formulas) that appropriately assign emissions and generation to individual EGUs. For example, if two EGUs share a common stack, the state should provide a methodology for disaggregating monitoring data to the individually covered EGUs. Another example for states to consider when appropriately assigning emissions and setting standards of performance is apportioning HRI that affect and improve the performance of multiple EGUs at a plant (*e.g.,* apportioning improvement credited to installed variable speed drives that affect multiple designated facilities at a plant).

As part of ensuring that regulatory obligations appropriately meet statutory requirements such as enforceability, the EPA has historically and consistently required that obligations placed on sources be quantifiable, permanent, verifiable, and enforceable. The EPA is similarly requiring that standards of performance placed on designated facilities as part of a state plan to implement ACE be quantifiable, permanent, verifiable, and enforceable. A state plan implementing ACE should include information adequate to support a determination by the EPA that the plan meets these goals.

Additionally, the EPA is finalizing a determination that states must include appropriate monitoring, reporting, and recordkeeping requirements to ensure that state plans adequately provide for the implementation and enforcement of standards of performance. Each state will have the flexibility to design a compliance monitoring program for assessing compliance with the standards of performance identified in the plan. To the extent that designated facilities or states already monitor and report relevant data to the EPA, states are encouraged to use these existing systems to efficiently monitor and report ACE compliance. For example, most potentially affected coal-fired EGUs already continuously monitor CO_2 emissions, heat input, and gross electric output and report hourly data to the EPA under 40 CFR part 75. Accordingly, if a state plan establishes a standard of performance for a unit's CO_2 emissions rate (*e.g.,* lb/MWh), states may use data collected by the EPA under 40 CFR part 75 to meet the required monitoring, reporting, and recordkeeping requirements under these emission guidelines.

The EPA is further generally applying the new implementing regulations for timing, process and required components for state plan submissions and implementation for state plans required for designated facilities. The new implementing regulations are described in detail in section IV. In section 40 CFR 60.5740a there is a complete description and list of what a state plan must include.

a. Electronic Submission of State Plans

The EPA will, in the near future, provide states with an electronic means of submitting plans. While the EPA proposed the use of the SPeCS software which has been used by the Agency for SIP submittals, the Agency is still developing the software to be used for ACE submittals. The EPA recommends that states submit state plans electronically as it will provide a more structured process and provide more timely feedback to the submitting state. The Agency also anticipates that many states will choose to submit plans electronically as states have a level of familiarity with EPA software, such as SPeCS. The EPA envisions the electronic submittal system as a user-friendly, web-based system that enables state air agencies to officially submit state plans and associated information electronically for review. Electronic submittal is the EPA's preferred method for receiving state plan submissions under ACE. However, if a state prefers to submit its state plan outside of this forthcoming system, the state must confer with its EPA Regional Office regarding additional guidance for submitting the plan to the EPA.

b. Approvability of State Plans That Are More Stringent Than Required Under ACE

One issue raised by several commenters is whether the EPA can approve, and thereby render federally enforceable, a state plan that contains requirements for an existing source within a state's jurisdiction that are more stringent than what is required under CAA section 111(d).[253] At proposal, the EPA acknowledged that CAA section 116 allows states to be more stringent than federal requirements as a matter of state law, but also noted that nothing in section 116 provides for such more-stringent requirements to become federally enforceable.[254] Some commenters assert that it is not within the EPA's authority under the CAA to approve such more-stringent requirements as part of the federally enforceable state plan, and the EPA should instead direct states to make such requirements exclusively a matter of state law and enforceability. Other commenters assert that the Supreme Court in *Union Electric Co.* v. *EPA,* 427 U.S. 246, (1976), precluded a reading of section 116 that would functionally require two separate sets of requirements, one at the stricter state level and one at the federally approved level.

In response to the commenters who contend the EPA does not have the authority to approve more stringent state plans, the EPA believes that these comments have merit. However, the EPA does not think it is appropriate at this point to predetermine the outcome of its action on a state plan submission in this regard without going through notice-and-comment rulemaking with regard to the approval or disapproval of that submission.[255]

[253] Requirements under state plans generally become federally enforceable once the EPA determines that they are ''satisfactory'' per section 111(d)(2). Section 113(a)(3) provides the EPA with the authority, in part, to enforce any requirement of any plan approved under the same subchapter as section 113; section 111(d) is within the same subchapter as section 113. Additionally, section 304(a)(1) grants citizens the authority to bring civil action against any person in violation of an ''emission standard'' under the CAA. Section 304(f)(1) and (3) respectively define ''emission standard'' as a standard of performance or any requirement under section 111 without regard to whether such requirement is expressed as an emission standard. Accordingly, citizens with standing could attempt to enforce the requirements of an EPA-approved section 111(d) state plan.

[254] 83 FR 44767 n.37.

[255] In the CPP, the EPA took the position that because ''the EPA's action on a 111(d)(1) state plan is structurally identical to the EPA's action on a SIP,'' the EPA is required to approve a state plan that is more stringent than the BSER because of CAA section 116 as interpreted by *Union Electric.* Legal Memorandum Accompanying Clean Power Plan for Certain Issues at 28–30; 80 FR 64840. For the reasons further described in this preamble, the EPA's position on this state plan stringency issue has evolved since the EPA addressed it in the CPP, and the Agency now identifies a potentially salient structural distinction between CAA sections 110 and 111(d). Notably, the BSER aspect of section 111(d) is absent from section 110, as SIP-measures required for attainment or maintenance of the NAAQS are not predicated on application of a specific technology. Under CAA section 109, the EPA establishes a health-protective standard, and CAA section 110 then gives states broad latitude on designing the contents of SIPs intended to meet that standard. By contrast, under CAA section 111, the EPA identifies a particular measure or set of measures, and CAA section 111(d) more narrowly prescribes that the contents of state plans include performance standards based on the application of such measures, and measures that provide for the implementation and enforcement of such standards. Given this key distinction between CAA sections 110 and 111(d), the EPA no longer takes the position it took in the CPP that these two statutory schemes are ''structurally identical'' and that therefore, under *Union Electric,* it must approve section 111(d) state plans that are more stringent on this basis. See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009). However, for the reasons discussed in this preamble, the EPA is not at this stage prejudging the approvability of any future plan submission in this regard and will evaluate any plan submission, including one that is more stringent than what the BSER requires, on an individual basis through notice-and-comment rulemaking.

In response to the commenters who contend the EPA has the authority to approve more stringent state plans, as an initial matter, the EPA notes that the Court's decision in *Union Electric* on its face does not apply to state plans under CAA section 111(d). The decision specifically evaluated whether the EPA has the authority to approve a SIP under *section 110* that is more stringent than what is necessary to attain and maintain the NAAQS. The Court specifically looked to the requirements in CAA section 110(a)(2)(A) as part of its analysis, a provision that is wholly separate and distinct from CAA section 111(d). CAA section 110(a)(2)(A) requires SIPs to include any assortment of measures that may be necessary or appropriate to meet the ''applicable requirements'' of the CAA, which largely relate to the attainment and maintenance of the NAAQS. CAA section 111(d), by contrast, directs state plans to establish standards of performance for existing sources that reflect the degree of emission limitation achievable through the application of the BSER that EPA has determined is adequately demonstrated—and CAA section 111(d) expressly provides that it cannot be used to regulate NAAQS pollutants. Because the Court's holding was in the context of section 110 and not CAA section 111(d), the EPA believes that *Union Electric* does not control the question of whether CAA section 111(d) state plans may be more stringent than federal requirements.

Thus, *Union Electric* and the SIP issues that it addresses are distinguishable from the CAA section 111(d) context. States have broad discretion under section 110 to select the measures for inclusion in their SIPs to meet the NAAQS, which are health- or welfare-based standards not predicated on the application of any particular technology, whereas state plans under 111(d) must establish standards of performance, which are defined at CAA section 111(a)(1) as reflecting the degree of emission limitation achievable through application of the BSER at a source. However, the EPA is mindful that it does not prejudge the approvability of any state plan submission, but rather must determine whether it is ''satisfactory'' through undertaking notice-and-comment rulemaking.[256] Further, some issues of approvability are most appropriately handled through the submission, review, and approval or disapproval processes (with approvals and disapprovals then being subject to judicial review). The EPA anticipates that some states may wish to apply additional measures beyond those that the EPA has identified as BSER when setting the standard of performance, which states may believe are better suited to particular existing sources within their jurisdiction. The EPA notes, as stated above, that the comments suggesting that the EPA does not have the authority to approve a state plan that establishes standards of performance for existing sources more stringent than those that would result from an application of the BSER identified by the EPA have merit. However, the EPA believes that the question of whether it has the authority to approve, and thereby render federally enforceable, a state plan that establishes standards of performance that are more stringent than those that would result from the application of the BSER that the EPA has identified is addressed properly in the context of evaluating an individual state plan.

While the EPA does not prejudge the approvability of a state plan that establishes standards of performance for existing sources within the state's jurisdiction that are more stringent than those that would result from the application of the BSER that the EPA has identified, there are clear principles and limitations imposed by CAA section 111(d) that will apply to the EPA's review of *any* state plan. As a first principle, states must apply the BSER measures, as further described in section III.E. of the preamble, and derive a standard of performance that reflects the degree of emission limitation achievable through application of the candidate technologies, taking into account remaining useful life and other factors as appropriate.

As a second principle, whatever the scope of a state's authority under state law may be to design a scheme to meet the emissions guidelines, the EPA's authority to approve state plans that contain standards of performance for existing sources only extends to measures that are authorized statutorily. Specifically, the EPA's authority is constrained to approving measures that comport with the statutory interpretations, including interpretations of the limitations on ''standards of performance'' and the underlying BSER. For example, CAA section 111(d)(1) clearly contemplates that state plans may only contain requirements for existing sources, and not other entities. Therefore, in implementing the ACE rule, the EPA may not approve state plan requirements on entities other than existing EGUs, which are the designated facilities under this rule.[257] Another example that would exceed the EPA's authority is a state plan that includes standards of performance or implementation measures that do not result in emission reductions from an individual designated facility, such as the use of biomass or emissions trading, for the reasons discussed at section III.E.4.c. and III.F.2.a, respectively. Finally, the EPA does not have the authority to approve measures that purport to be standards of performance but that actually do not meet the statutory and regulatory terms for such standards. For example, under ACE, the EPA cannot approve a standard that is a requirement for a designated facility shut down. Such a standard is an operational standard rather than a standard of performance.[258] The EPA has not authorized the use of operational standards under CAA section 111(h) because the EPA has determined that it is feasible to prescribe a standard of performance for this source category and pollutant, expressed as an emission rate.[259]

As previously described, the EPA must review state plans, including plans that establish standards of performance for a particular existing source or sources that are more stringent than the standards that would result from application of the BSER, through notice-and-comment rulemaking to determine whether they are ''satisfactory''. This review includes ensuring that the state

[256] *See* CAA section 111(d)(2), 40 CFR 60.27a(b).

[257] Section 111(d) clearly identifies that the regulated entity under this provision is an existing source that would be of the same source category as a new source regulated under section 111(b), *i.e.,* a designated facility, as defined at 40 CFR 60.21(b). If the EPA were to approve a state plan that contained provisions regulating entities other than designated facilities, that approval would give the EPA (and citizen groups) federal enforcement authority over such entities. The EPA believes such a result would be contrary to statements by the U.S. Supreme Court that caution an agency against interpreting its statutory authority in a way that ''would bring about an enormous and transformative expansion in [its] regulatory authority without clear congressional authorization,'' *Utility Air Regulatory Group* v. *EPA,* 134 S. Ct. 2427, 2444 (2014).

[258] This example is distinguishable from the one described in section IV.H. where a state chooses to rely on a source's remaining useful life in establishing a less stringent standard of performance for that source than would otherwise result from an application of the BSER. In that instance, a state would include the shutdown date as a measure for implementation of a standard of performance, as required under section 111(d)(1)(B).

[259] The EPA also notes that for purposes of a federal plan, the EPA is limited to promulgating a standard of performance, which, as defined by section 111(a)(1) must reflect the degree of emission limitation achievable by the BSER; in promulgating a standard of performance under a federal plan, the statute directs the EPA to take into account, among other factors, remaining useful life of the source to which the standard applies. *See* section 111(d)(2).

plan submission does not contravene the statute by including measures that the EPA has no authority to approve or enforce as a matter of federal law, and that the state actually has evaluated the BSER in setting a standard. Though the EPA lacks the authority to approve certain measures, thereby rendering them federally enforceable, nothing precludes states from implementing or enforcing such requirements as a matter of state law.[260]

G. Impacts of the Affordable Clean Energy Rule

1. What are the air impacts?

In the RIA for this action, the Agency provides a full benefit-cost analysis of an illustrative policy scenario representing ACE, which models adoption of HRI measures at coal-fired EGUs. This illustrative policy scenario represents one set of potential outcomes of state determinations of standards of performance and compliance with those standards by affected coal-fired EGUs. Throughout the RIA, the illustrative policy scenario is compared against a single baseline that does not include the CPP. As described in Chapter 2 of the RIA, the EPA believes that a single baseline without the CPP represents a reasonable future against which to assess the potential impacts of the ACE rule. The EPA also provides analysis in Chapter 2 of the RIA that satisfies any need for regulatory impact analysis that may be required by statute or executive order for the repeal of the CPP.

The EPA has identified the BSER to be HRI. The EPA is providing states with a list of candidate HRI technologies that must be evaluated when establishing standards of performance. The cost, suitability, and potential improvement for any of these HRI technologies is dependent on a range of unit-specific factors such as the size, age, fuel use, and the operating and maintenance history of the unit. As such, the HRI potential can vary significantly from unit to unit. The EPA does not have sufficient information to assess HRI potential on a unit-by-unit basis. Therefore, any analysis of the final rule is illustrative. Nonetheless, the EPA believes that such illustrative analyses can provide important insights.

In the RIA, the EPA evaluated an illustrative policy scenario that assumes HRI potential and costs will differ based on unit size and efficiency. To establish categories and HRI potential for use in the RIA, the EPA developed a methodology that is explained in Chapter 1 of the RIA. Designated facilities were grouped into twelve groups based on three size categories and four efficiency categories. Cost and performance assumptions for the candidate technologies were applied to the groupings to establish representative and illustrative assumptions for use in the RIA. The EPA then assumed these varying levels of HRI potential and costs for the different groups in the power sector and emissions modeling as an illustration of the potential impacts.

The EPA evaluates the potential impacts of the illustrative policy scenario using the present value (PV) of costs, benefits, and net benefits, calculated for the years 2023–2037 from the perspective of 2016, using both a three percent and seven percent end-of-period discount rate. In addition, the EPA presents the assessment of costs, benefits, and net benefits for specific snapshot years, consistent with historic practice. These specific snapshot years are 2025, 2030, and 2035.

Overall, the impacts of the illustrative policy scenario in terms of change in emissions, compliance costs, and other energy-sector effects are small compared to the recent market-driven changes that have occurred in the power sector. These larger industry trends are discussed in detail in Chapter 2 of the RIA. In evaluating the significance of the illustrative policy scenario, as presented in the RIA and summarized here, it is important for context to understand that these impacts are modest and do not diverge dramatically from baseline expectations.

Emissions are projected to be lower under the illustrative policy scenario than under the baseline. Table 3 shows projected aggregate emission decreases for the illustrative policy scenario, relative to the baseline, for CO_2, SO_2 and NO_X from the electricity sector.

TABLE 3—PROJECTED CO_2, SO_2, AND NO_X ELECTRICITY SECTOR EMISSION IMPACTS FOR THE ILLUSTRATIVE POLICY SCENARIO, RELATIVE TO THE BASELINE

[2025, 2030, and 2035]

	CO_2 (million short tons)	SO_2 (thousand short tons)	NO_X (thousand short tons)
2025	(12)	(4.1)	(7.3)
2030	(11)	(5.7)	(7.1)
2035	(9.3)	(6.4)	(6.0)

Note: All estimates in this table are rounded to two significant figures.

The emissions changes in these tables do not account for changes in HAP that may occur as a result of this rule. For projected impacts on mercury emissions, please see Chapter 3 of the RIA. The EPA was unable to project impacts on other HAP emissions from the illustrative policy scenario due to methodology and resource limitations.

As noted earlier in this section, the illustrative policy scenario is compared against a baseline that does not include the CPP. This is because the ACE action only occurs after the repeal of the CPP. Chapter 2 of the RIA discusses the EPA's analysis of the CPP repeal. It explains how after reviewing the comments and fully considering a number of factors, the EPA ultimately concluded that the most likely result of implementation of the CPP would be no change in emissions and therefore no cost or changes in health benefits. This conclusion (*i.e.,* that repeal of the CPP has little or no effect against a baseline that includes the CPP) is appropriate for several reasons, consistent with OMB's guidance that the baseline for analysis ''should be the best assessment of the way the world would look absent the proposed action.'' [261] It is the EPA's consideration of the weight of the evidence, taking into account the totality of the available information, as presented in Chapter 2 of the RIA, that leads to the finding and conclusion that there is likely to be no difference between a world where the CPP is implemented and one where it is not. As further explained in Chapter 2 of the RIA, the EPA comes to this conclusion not through the use of a single analytical

[260] *See* CAA section 116; 40 CFR 60.24a(f).

[261] OMB circular A–4, at 15.

scenario or modeling alone, but rather through the weight of evidence that includes: Several IPM scenarios that explore a range of changes to assumptions about implementation of the CPP; consideration of the ongoing evolution and change of the electric sector; and recent commitments by many utilities that include long-term CO_2 reductions across the EGU fleet.

2. What are the energy impacts?

This final action has energy market implications. Overall, the analysis to support this action indicates that there are important power sector impacts that are worth noting, although they are small relative to recent market-driven changes in the sector or compared to some other EPA air regulatory actions for EGUs. The estimated impacts reflect the EPA's illustrative analysis of the final action. States are afforded considerable flexibility in the final action, and thus the impacts could be different to the extent states make different choices than those assumed in the illustrative analysis.

Table 4 presents a variety of energy market impacts for 2025, 2030, and 2035 for the illustrative policy scenario representing ACE, relative to the baseline.

TABLE 4—SUMMARY OF CERTAIN ENERGY MARKET IMPACTS FOR THE ILLUSTRATIVE POLICY SCENARIO, RELATIVE TO THE BASELINE

[Percent change]

	2025 (%)	2030 (%)	2035 (%)
Retail electricity prices	0.1	0.1	0.0
Average price of coal delivered to the power sector	0.1	0.0	(0.1)
Coal production for power sector use	(1.1)	(1.0)	(1.0)
Price of natural gas delivered to power sector	0.0	(0.1)	(0.6)
Price of average Henry Hub (spot)	0.0	0.0	(0.6)
Natural gas use for electricity generation	(0.4)	(0.3)	0.0

Energy market impacts are discussed more extensively in the RIA found in the rulemaking docket.

3. What are the compliance costs?

The power industry's ''compliance costs'' are represented in this analysis as the change in electric power generation costs between the baseline and illustrative policy scenario, including the cost of monitoring, reporting, and recordkeeping. In simple terms, these costs are an estimate of the increased power industry expenditures required to implement the HRI required by the final action.

The compliance assumptions—and, therefore, the projected compliance costs—set forth in this analysis are illustrative in nature and do not represent the plans that states may ultimately pursue. The illustrative policy scenario is designed to reflect, to the extent possible, the scope and nature of the final guidelines. However, there is considerable uncertainty with regards to the precise measures that states will adopt to meet the final requirements because there are considerable flexibilities afforded to the states in developing their state plans.

Table 5 presents the annualized compliance costs of the illustrative policy scenario.

TABLE 5—COMPLIANCE COSTS FOR THE ILLUSTRATIVE POLICY SCENARIO, RELATIVE TO THE BASELINE

[Millions of 2016$]

Year	Cost
2025	290
2030	280
2035	25

Note: Compliance costs equal the projected change in total power sector generating costs plus the costs of monitoring, reporting, and recordkeeping.

More detailed cost estimates are available in the RIA included in the rulemaking docket.

4. What are the economic and employment impacts?

Environmental regulation may affect groups of workers differently, as changes in abatement and other compliance activities cause labor and other resources to shift. An employment impact analysis describes the characteristics of groups of workers potentially affected by a regulation, as well as labor market conditions in affected occupations, industries, and geographic areas. Market and employment impacts of this final action are discussed more extensively in Chapter 5 of the RIA for this final action.

5. What are the benefits?

The EPA reports the estimated impact on climate benefits from changes in CO_2 and the estimated impact on health benefits attributable to changes in SO_2, NO_X, and $PM_{2.5}$ emissions, based on the illustrative policy scenario described previously. The EPA refers to the climate benefits as ''targeted pollutant benefits'' as they reflect the direct benefits of reducing CO_2, and to the ancillary health benefits derived from reductions in emissions other than CO_2 as ''co-benefits'' as they are not direct benefits from reducing the targeted pollutant. To estimate the climate benefits associated with changes in CO_2 emissions, the EPA applied a measure of the domestic social cost of carbon (SC–CO_2). The SC–CO_2 is a metric that estimates the monetary value of impacts associated with marginal changes in CO_2 emissions in a given year. The SC–CO_2 estimates used in the RIA for these rulemakings focus on the direct impacts of climate change that are anticipated to occur within U.S. borders.

The estimated health co-benefits are the monetized value of the human health benefits among populations exposed to changes in $PM_{2.5}$ and ozone. This rule is expected to alter the emissions of SO_2 and NO_X emissions, which will in turn affect the level of $PM_{2.5}$ and ozone in the atmosphere. Using photochemical modeling, the EPA predicted the change in the annual average $PM_{2.5}$ and summer season ozone across the U.S. for the years 2025, 2030, and 2035 for the illustrative policy scenario. The EPA next quantified the human health impacts and economic value of these changes in air quality using the environmental Benefits Mapping and Analysis Program—Community Edition (BENMAP–CE). The EPA quantified effects using concentration-response parameters

detailed in the RIA, which are consistent with those employed by the Agency in the PM NAAQS and Ozone NAAQS RIAs (U.S. EPA, 2012; 2015) (Table 6).

TABLE 6—ESTIMATED ECONOMIC VALUE OF AVOIDED $PM_{2.5}$ AND OZONE-ATTRIBUTABLE DEATHS AND ILLNESSES FOR THE ILLUSTRATIVE POLICY SCENARIO USING ALTERNATIVE APPROACHES TO REPRESENTING $PM_{2.5}$ EFFECTS

[95% Confidence interval in parentheses; millions of 2016$] [a]

	2025			2030			2035		
Ozone Benefits Summed With $PM_{2.5}$ Benefits									
3% Discount rate									
No-threshold model [b]	$390 ($37 to $1,100)	*to*	$970 ($86 to $2,800)	$490 ($47 to $1,300)	*to*	$1,200 ($110 to $3,500).	$550 ($52 to $1,500)	*to*	$1,400 ($120 to $3,900).
Limited to above LML [c]	$370 ($36 to $1,000)	*to*	$480 ($42 to $1,400)	$440 ($42 to $1,200)	*to*	$520 ($47 to $1,500)	$480 ($25 to $1,300)	*to*	$610 ($16 to $1,800).
Effects above NAAQS [d]	$76 ($8 to $210)	*to*	$250 ($23 to $760)	$75 ($8 to $210)	*to*	$260 ($23 to $770)	$90 ($10 to $250)	*to*	$320 ($28 to $930).
Ozone Benefits Summed With $PM_{2.5}$ Benefits									
7% Discount rate									
No-threshold model [b]	$360 ($34 to $990)	*to*	$900 ($80 to $2,600)	$460 ($44 to $1,200)	*to*	$1,100 ($100 to $3,200).	$510 ($48 to $1,400)	*to*	$1,300 ($110 to $3,600).
Limited to above LML [c]	$350 ($33 to $950)	*to*	$460 ($41 to $1,300)	$410 ($39 to $1,100)	*to*	$500 ($44 to $1,400)	$450 ($22 to $1,200)	*to*	$590 ($13 to $1,700).
Effects above NAAQS [d]	$76 ($8 to $210)	*to*	$250 ($23 to $760)	$75 ($8 to $210)	*to*	$260 ($23 to $770)	$90 ($10 to $250)	*to*	$320 ($28 to $930).

[a] Values rounded to two significant figures.

[b] PM effects quantified using a no-threshold model. Low end of range reflects dollar value of effects quantified using concentration-response parameter from Krewski et al. (2009) and Smith et al. (2008) studies; upper end quantified using parameters from Lepeule et al. (2012) and Jerrett et al. (2009). Full range of ozone effects is included, and ozone effects range from 19% to 22% of the estimated values.

[c] PM effects quantified at or above the Lowest Measured Level of each long-term epidemiological study. Low end of range reflects dollar value of effects quantified down to LML of Krewski et al. (2009) study (5.8 $\mu g/m^3$); high end of range reflects dollar value of effects quantified down to LML of Lepeule et al. (2012) study (8 $\mu g/m^3$). Full range of ozone effects is still included, and ozone effects range from 20% to 49% of the estimated values.

[d] PM effects only quantified at or above the annual mean of 12 to provide insight regarding the fraction of benefits occurring above the NAAQS. Range reflects effects quantified using concentration-response parameters from Smith et al. (2008) study at the low end and Jerrett et al. (2009) at the high end. Full range of ozone effects is still included, and ozone effects range from 91% to 95% of the estimated values.

To give readers insight to the distribution of estimated benefits displayed in Table 6, the EPA also reports the PM benefits according to alternative concentration cut-points and concentration-response parameters. The percentage of estimated avoided $PM_{2.5}$-related deaths occurring in 2025 below the lowest measured levels (LML) of the two long-term epidemiological studies the EPA uses to estimate risk varies between 5 percent (Krewski et al. 2009) [262] and 69 percent (Lepeule et al. 2012).[263] The percentage of estimated avoided premature deaths occurring in 2025 above the LML and below the NAAQS ranges between 94 percent (Krewski et al. 2009) and 31 percent (Lepeule et al. 2012). Less than 1 percent of the estimated avoided premature deaths occur in 2025 above the annual mean $PM_{2.5}$ NAAQS of 12 $\mu g/m^3$.

Table 7 reports the combined domestic climate benefits and ancillary health co-benefits attributable to changes in SO_2 and NO_X emissions estimated for 3 percent and 7 percent discount rates in the years 2025, 2030, and 2035, in 2016 dollars. This table reports the air pollution effects calculated using $PM_{2.5}$ log-linear no threshold concentration-response functions that quantify risk associated with the full range of $PM_{2.5}$ exposures experienced by the population (U.S. EPA, 2009 [264]; U.S. EPA, 2011 [265]; NRC, 2002 [266]).

TABLE 7—MONETIZED BENEFITS FOR THE ILLUSTRATIVE POLICY SCENARIO, RELATIVE TO THE BASELINE

[Millions of 2016$]

	Values calculated using 3% discount rate			Values calculated using 7% discount rate		
	Domestic climate benefits	Ancillary health co-benefits	Total benefits	Domestic climate benefits	Ancillary health co-benefits	Total benefits
2025	81	390 to 970	470 to 1,000	13	360 to 900	370 to 920.
2030	81	490 to 1,200	570 to 1,300	14	460 to 1,100	470 to 1,100.
2035	72	550 to 1,400	620 to 1,400	13	510 to 1,300	520 to 1,300.

Notes: All estimates are rounded to two significant figures, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The ancillary health co-benefits reflect the sum of the $PM_{2.5}$ and ozone co-benefits and reflect the range based on adult mortality functions (*e.g.,* from Krewski et al. (2009) with Smith et al. (2009) to Lepeule et al. (2012) with Jerrett et al. (2009)). The health co-benefits do not account for direct exposure to NO_2, SO_2, and HAP; ecosystem effects; or visibility impairment.

[262] Krewski, D., Jerrett, M., Burnett, R.T., Ma, R., Hughes, E., Shi, Y., Turner, M.C., Pope, C.A., Thurston, G., Calle, E.E., Thun, M.J., Beckerman, B., DeLuca, P., Finkelstein, N., Ito, K., Moore, D.K., Newbold, K.B., Ramsay, T., Ross, Z., Shin, H., Tempalski, B., 2009. Extended follow-up and spatial analysis of the American Cancer Society study linking particulate air pollution and mortality. Res. Rep. Health. Eff. Inst. 5–114–36.

[263] Lepeule, J., Laden, F., Dockery, D., Schwartz, J., 2012. Chronic exposure to fine particles and mortality: An extended follow-up of the Harvard Six Cities study from 1974 to 2009. Environ. Health Perspect. *https://doi.org/10.1289/ehp.1104660.*

[264] U.S. EPA, 2009. Integrated Science Assessment for Particulate Matter. U.S. Environmental Protection Agency, National Center for Environmental Assessment, Research Triangle Park, NC.

[265] U.S. EPA, 2011. Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards. Research Triangle Park, NC.

[266] NRC, 2002. Estimating the Public Health Benefits of Proposed Air Pollution Regulations. National Research Council. Washington, DC.

In general, the EPA is more confident in the size of the risks estimated from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, the EPA is less confident in the risk the EPA estimates from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies.[267] Furthermore, when setting the 2012 PM NAAQS, the Administrator also acknowledged greater uncertainty in specifying the ''magnitude and significance'' of PM-related health risks at PM concentrations below the NAAQS. As noted in the preamble to the 2012 PM NAAQS final rule, ''EPA concludes that it is not appropriate to place as much confidence in the magnitude and significance of the associations over the lower percentiles of the distribution in each study as at and around the long-term mean concentration.'' [268]

Monetized co-benefits estimates shown here do not include several important benefit categories, such as direct exposure to SO_2, NO_X, and HAP including mercury and hydrogen chloride. Although the EPA does not have sufficient information or modeling available to provide monetized estimates of changes in exposure to these pollutants for this rule, the EPA includes a qualitative assessment of these unquantified benefits in the RIA. For more information on the benefits analysis, please refer to the RIA for these rules, which is available in the rulemaking docket.

IV. Changes to the Implementing Regulations for CAA Section 111(d) Emission Guidelines

The EPA is finalizing new regulations to implement CAA section 111(d) (implementing regulations) which will be codified at 40 CFR part 60, subpart Ba. The current implementing regulations at 40 CFR part 60, subpart B, were originally promulgated in 1975.[269] Section 111(d)(1) of the CAA explicitly requires that the EPA prescribe regulations establishing a procedure similar to that under section 110 of the CAA for states to submit plans to the EPA establishing standards of performance for existing sources within their jurisdiction. The implementing regulations have not been significantly revised since their original promulgation in 1975. Notably, the implementing regulations do not reflect CAA section 111(d) in its current form as amended by Congress in 1977, and do not reflect CAA section 110 in its current form as amended by Congress in 1990. Accordingly, the EPA believes that certain portions of the implementing regulations do not appropriately align with CAA section 111(d), contrary to that provision's mandate that the EPA's regulations be ''similar'' in procedure to the provisions of section 110. Therefore, the EPA proposed to promulgate new implementing regulations that are in accordance with the statute in its current form (*See* 83 FR 44746–44813). Agencies have the ability to revisit prior decisions, and the EPA believes it is appropriate to do so here in light of the potential mismatch between certain provisions of the implementing regulations and the statute.[270] While the preamble for the final new implementing regulations are part of the same **Federal Register** document as certain other Agency rules (specifically, the repeal of the CPP and the promulgation of the ACE rule), these new implementing regulations are a separate and distinct rulemaking with its own regulatory text and response to comments. The implementing regulations are not dependent on the other final actions contained in this **Federal Register** document.

The EPA proposed to largely carry over the current implementing regulations in 40 CFR part 60, subpart B to a new subpart that will be applicable to emission guidelines that are finalized either concurrently with or subsequently to final promulgation of the new implementing regulations, as well as to state plans or federal plans associated with such emission guidelines. For purposes of regulatory certainty, the EPA believes it is appropriate to apply these new implementing regulations prospectively and retain the existing implementing regulations as applicable to CAA section 111(d) emission guidelines and associated state plans or federal plans that were promulgated previously. Additionally, because the original implementing regulations also applied to regulations promulgated under CAA section 129 (a provision enacted in the 1990 Amendments that builds on CAA section 111 but provides specific authority to address facilities that combust waste), which has its own statutory requirements distinct from those of CAA section 111(d), the original implementing regulations under 40 CFR part 60, subpart B continue to apply to EPA-regulations promulgated under CAA section 129, and any associated state plans and federal plans. The new implementing regulations are thus applicable only to CAA section 111(d) regulations and associated state plans issued solely under the authority of CAA section 111(d).

The EPA is aware that there are a number of cases where state plan submittal and review processes are still ongoing for existing CAA section 111(d) emission guidelines. Because the EPA is finalizing new state plan and federal plan timing requirements under the implementing regulations to more closely align CAA section 111(d) with both general CAA section 110 state implementation plan (SIP) and federal implementation plan (FIP) timing requirements, and because of the EPA's understanding from experience of the realities of how long these actions typically take, the EPA is applying the new timing requirements to both emission guidelines published after the new implementing regulations are finalized and to all ongoing emission guidelines already published under CAA section 111(d). The EPA is finalizing applicability of the timing changes to all ongoing 111(d) regulations for the same reasons that the EPA is changing the timing requirements prospectively. Based on years of experience working with states to develop SIPs under CAA section 110, the EPA believes that given the comparable amount of work, effort, coordination with sources, and the time required to develop state plans, more time is necessary for the process. Giving states three years to develop state plans is more appropriate than the nine months provided for under the existing implementing regulations, considering the workload required for state plan development. These practical considerations regarding the time needed for state plan development are also applicable and true for recent emission guidelines where the state

[267] The **Federal Register** notice for the 2012 PM NAAQS indicates that ''[i]n considering this additional population level information, the Administrator recognizes that, in general, the confidence in the magnitude and significance of an association identified in a study is strongest at and around the long-term mean concentration for the air quality distribution, as this represents the part of the distribution in which the data in any given study are generally most concentrated. She also recognizes that the degree of confidence decreases as one moves towards the lower part of the distribution.'' *See* 78 FR 3159 (January 15, 2013).

[268] *See* 78 FR 3154, January 15, 2013.

[269] *See* 40 FR 53346.

[270] The authority to reconsider prior decisions exists in part because the EPA's interpretations of statutes it administers ''[are not] instantly carved in stone,'' but must be evaluated ''on a continuing basis.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984). Indeed, ''[a]gencies obviously have broad discretion to reconsider a regulation at any time.'' *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017).

plan submittal and review process are still ongoing.

For those provisions that are being carried over from the existing implementing regulations into the new implementing regulations, the EPA is not intending to substantively change those provisions from their original promulgation and continues to rely on the record under which they were promulgated. Therefore, the following provisions remain substantively the same from their original promulgation: 40 CFR 60.21a(a)–(d), (g)–(j) (Definitions); 60.22a(a), 60.22a(b)(1)–(3), (b)(5), (c) (Publication of emission guidelines); 60.23a(a)–(c), (d)(3)–(5), (e)–(h) (Adoption and submittal of state plans; public hearings); 60.24a(a)–(d), (f) (Standards of performance and compliance schedules); 60.25a (Emission inventories, source surveillance, reports); 60.26a (Legal authority); 60.27a(a), (e)–(f) (Actions by the Administrator); 60.28a(b) (Plan revisions by the state); and 60.29a (Plan revisions by the Administrator).

As noted at proposal, the EPA is also sensitive to potential confusion over whether these new implementing regulations would apply to emission guidelines previously promulgated or to state plans associated with prior emission guidelines, so the EPA proposed that the new implementing regulations are applicable only to emission guidelines and associated plans developed after promulgation of this regulation, including the emission guidelines being proposed as part of this action for GHGs and existing designated facilities. The EPA is finalizing this proposed applicability of the new implementing regulations.

While the EPA is carrying over a number of requirements from the existing implementing regulations to the new implementing regulations, the EPA is finalizing specific changes to better align the implementing regulations with the statute. These changes are reflected in the regulatory text for the new implementing regulations, and include:

- An explicit provision allowing specific emission guidelines to supersede the requirements of the new implementing regulations;
- Changes to the definition of ''emission guidelines'';
- Updated timing requirements for the submission of state plans;
- Updated timing requirements for the EPA's action on state plans;
- Updated timing requirements for the EPA's promulgation of a federal plan;
- Updated timing requirement for when increments of progress must be included as part of a state plan;
- Completeness criteria and a process for determining completeness of state plan submissions similar to CAA section 110(k)(1) and (2);
- Updated definition replacing ''emission standard'' with ''standard of performance'';
- Usage of the internet to satisfy certain public hearing requirements;
- Elimination of the distinction between public health-based and welfare-based pollutants in emission guidelines; and
- Updated provision allowing for consideration of remaining useful life and other factors to be consistent with CAA section 111(d)(1)(B).

Because the EPA is updating the implementing regulations and many of the provisions from the existing implementing regulations are being carried over, the EPA wants to be clear and transparent with regard to the changes that are being made to the implementing regulations. As such, the EPA is providing Table 8 that summarizes the changes being made.

TABLE 8—SUMMARY OF CHANGES TO THE IMPLEMENTING REGULATIONS

New implementing regulations—Subpart Ba for all future and ongoing CAA section 111(d) emission guidelines	Existing implementing regulations—Subpart B for all previously promulgated CAA section 111(d) emission guidelines
Explicit authority for a new 111(d) emission guidelines requirement to supersede these implementing regulations.	No explicit authority.
Use of term ''standard of performance''	Use of term ''emission standard''.
''Standard of performance'' allows states to include design, equipment, work practice, or operational standards when the EPA determines it is not feasible to prescribe or enforce a standard of performance, consistent with the requirements of CAA section 111(h).	''Emission standard'' allows states to prescribe equipment specifications when the EPA determines it is clearly impracticable to establish an emission standard.
State submission timing: 3 years from promulgation of final emission guidelines.	State submission timing: 9 months from promulgation of final emission guidelines.
EPA action on state plan submission timing: 12 months after determination of completeness.	EPA action on state plan submission timing: 4 months after submittal deadline.
Timing for EPA promulgation of a federal plan, as appropriate: 2 years after finding of plan submission to be incomplete, finding of failure to submit a plan, or disapproval of state plan.	Timing for EPA promulgation of a federal plan, as appropriate: 6 months after submittal deadline.
Increments of progress are required if compliance schedule for a state plan is longer than 24 months after the plan is due.	Increments of progress are required if compliance schedule for a state plan is longer than 12 months after the plan is due.
Completeness criteria and process for state plan submittals	No analogous requirement.
Usage of the internet to satisfy certain public hearing requirements	No analogous requirement.
No distinction made in treatment between health-based and welfare-based pollutants; states may consider remaining useful life and other factors regardless of type of pollutant.	Different provisions for health-based and welfare-based pollutants; state plans must be as stringent as the EPA's emission guidelines for health-based pollutants unless variance provision is invoked.

A. Regulatory Background

The Agency also is, in this action, clarifying the respective roles of the states and the EPA under section 111(d), including by finalizing revisions to the regulations implementing that section in 40 CFR part 60 subpart B. CAA section 111(d)(1) states that the EPA ''Administrator shall prescribe regulations which shall establish a procedure . . . under which each state shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant . . . to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance.'' [271] CAA section 111(d)(1) also requires the Administrator to ''permit the State in applying a standard of performance to any particular source

[271] *See* 42 U.S.C. 7411(d).

under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.''[272]

As the statute provides, the EPA's authorized role under CAA section 111(d)(1) is to develop a procedure for states to establish standards of performance for existing sources. Indeed, the Supreme Court has acknowledged the role and authority of states under CAA section 111(d): This provision allows ''each State to take the first cut at determining how best to achieve EPA emissions standards within its domain.'' [273] The Court addressed the statutory framework as implemented through regulation, under which the EPA promulgates emission guidelines and the states establish performance standards: ''For existing sources, EPA issues emissions guidelines; in compliance with those guidelines and subject to federal oversight, the States then issue performance standards for stationary sources within their jurisdiction, [42 U.S.C.] 7411(d)(1).'' [274]

As contemplated by CAA section 111(d)(1), states possess the authority and discretion to establish appropriate standards of performance for existing sources. CAA section 111(a)(1) defines ''standard of performance'' as ''a standard of emissions of air pollutants which reflects'' what is commonly referred to as the ''Best System of Emission Reduction'' or ''BSER''—*i.e.,* ''the degree of emission limitation achievable through the application of the *best system of emission reduction* which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.''[275]

In order to effectuate the Agency's role under CAA section 111(d)(1), the EPA promulgated implementing regulations in 1975 to provide a framework for subsequent EPA rules and state plans under CAA section 111(d).[276] The implementing regulations reflect the EPA's principal task under CAA section 111(d)(1), which is to develop a procedure for states to establish standards of performance for existing sources through state plans. The EPA is promulgating an updated version of the implementing regulations. Under the revised implementing regulations, the EPA effectuates its role by publishing ''emission guidelines'' [277] that, among other things, contain the EPA's determination of the BSER for the category of existing sources being regulated.[278] In undertaking this task, the EPA ''will specify different emissions guidelines . . . for different sizes, types and classes of . . . facilities when costs of control, physical limitations, geographic location, or similar factors make subcategorization appropriate.'' [279]

In short, under the EPA's revised regulations implementing CAA section 111(d), which tracks with the existing implementing regulations in this regard, the guideline documents serve to ''provide information for the development of state plans.'' [280] The ''emission guidelines,'' reflecting the degree of emission limitation achievable through application of the BSER determined by the Administrator to be adequately demonstrated, are the principal piece of information states rely on to develop their plans that establish standards of performance for existing sources. Additionally, the Act requires that the EPA permit states to consider, ''among other factors, the remaining useful life'' of an existing source in applying a standard of performance to such sources.[281]

Additionally, while CAA section 111(d)(1) clearly authorizes states to develop state plans that establish performance standards and provides states with certain discretion in determining appropriate standards, CAA section 111(d)(2) provides the EPA specifically a role with respect to such state plans. This provision authorizes the EPA to prescribe a plan for a state ''in cases where the State fails to submit a satisfactory plan.'' [282] The EPA therefore is charged with determining whether state plans developed and submitted under CAA section 111(d)(1) are ''satisfactory,'' and the new implementing regulations at 40 CFR 60.27a accordingly provide timing and procedural requirements for the EPA to make such a determination. Just as guideline documents may provide information for states in developing plans that establish standards of performance, they may also provide information for the EPA to consider when reviewing and taking action on a submitted state plan, as the new implementing regulations at 40 CFR 60.27a(c) reference the ability of the EPA to find a state plan as ''unsatisfactory because the requirements of (the implementing regulations) have not been met.'' [283]

B. Provision for Superseding Implementing Regulations

The EPA proposed to include a provision in the new implementing regulations that expressly allows for any emission guidelines to supersede the applicability of the implementing regulations as appropriate, parallel to a provision contained in the 40 CFR part 63 General Provisions implementing section 112 of the CAA. The EPA cannot foresee all of the unique circumstances and factors associated with particular future emission guidelines, and therefore different requirements may be necessary for a particular 111(d) rulemaking that the EPA cannot envision at this time. The EPA is finalizing this provision as proposed.

C. Changes to the Definition of ''Emission Guidelines''

The existing implementation regulations under 40 CFR 60.21(e) contain a definition of ''emission guidelines,'' defining them as guidelines which reflect the degree of emission reduction achievable through the application of the BSER which (taking into account the cost of such reduction) the Administrator has determined has been adequately demonstrated for designated facilities. This definition additionally references that emission guidelines may be set forth in 40 CFR part 60, subpart C, or a ''final guideline document'' published under 40 CFR 60.22(a). While the implementing regulations do not define the term ''final guideline document,'' 40 CFR 60.22 generally contains a number of requirements pertaining to the contents of guideline documents, which are intended to provide information for the development of state plans.[284] The preambles for both the proposed and final existing implementing regulations suggest that ''emission guidelines''

[272] *Id.*

[273] *Am. Elec. Power Co.* v. *Connecticut,* 131 S. Ct. 2527, 2539 (2011).

[274] *Id.* at 2537–38.

[275] 42 U.S.C. 7411(a)(1) (emphasis added).

[276] *See* 40 CFR part 60, subpart B (hereafter referred to as the ''implementing regulations'').

[277] *See* section IV.B. for the changes to the definition of ''emission guidelines'' as part of the EPA's new implementing regulations.

[278] *See* 40 CFR 60.22a(b) (''Guideline documents published under this section will provide information for the development of State plans, such as: . . . (4) An emission guideline that reflects the application of the best system of emission reduction (considering the cost of such reduction) that has been adequately demonstrated.'').

[279] 40 CFR 60.22(b)(5).

[280] 40 CFR 60.22a(b).

[281] 42 U.S.C. 7411(d)(1).

[282] *Id.* 7411(d)(2)(A).

[283] *See also* 40 FR 53343 (''If there is to be substantive review, there must be criteria for the review, and EPA believes it is desirable (if not legally required) that the criteria be made known in advance to the States, to industry, and to the general public. The emission guidelines, each of which will be subjected to public comment before final adoption, will serve this function.'').

[284] *See* 40 CFR 60.22(b).

would be guidelines provided by the EPA that reflect the degree of emission limitation achievable by the BSER. In the proposal for this action, the EPA described that it is important to provide information on such degree of emission limitation in order to guide states in their establishment of standards of performance as required under CAA section 111(d). However, the EPA also explained that it did not believe anything in CAA section 111(a)(1) or 111(d) compels the EPA to provide a presumptive emission standard that reflects the degree of emission limitation achievable by application of the BSER. Accordingly, as part of the proposed new implementing regulations, the EPA proposed to re-define ''emission guidelines'' as final guideline documents published under 40 CFR 60.22a(a) that include information on the degree of emission reduction achievable through the application of the BSER which (taking into account the cost of such reduction and any non-air quality health and environmental impact and energy requirements) the EPA has determined has been adequately demonstrated for designated facilities.

The EPA received substantial comments regarding this proposed change to the implementing regulations. Commenters contend that because CAA section 111(a)(1) requires the EPA to identify the BSER, it is also the EPA's statutory responsibility to identify the degree of emission limitation achievable through application of the BSER. According to commenters, the identification of a BSER without an accompanying emission limitation reflecting its application is an incomplete identification of the system of emission reduction itself, as it is the manner and degree of application of a system that often determines the quantity and cost of the emission reductions achieved, as well as any implications for energy requirements—factors that are statutorily a component of the BSER analysis delegated to the EPA.

The EPA has considered carefully these comments and is not finalizing the proposed changes to the definition of ''emission guidelines'' regarding the aspect of such guidelines reflecting the degree of emission limitation achievable through application of the BSER. The EPA is finalizing a definition of ''emission guidelines'' that requires them to reflect the degree of emission limitation of emission achievable through application of the BSER, as well as updates to the definition consistent with CAA section 111(a)(1) (*e.g.,* including a reference to ''energy requirements'' which was not present in the original definition). Relatedly, the EPA is not finalizing changes to proposed 40 CFR 60.21a(e) requiring the EPA in emission guidelines to provide *information* on the degree of emission limitation achievable through application of the BSER rather than such degree of emission limitation itself. While the statute is ambiguous as to whose role (*i.e.,* the EPA's or the states') it is to determine the degree of emission limitation achievable through application of the BSER in the context of standards of performance for existing sources, the EPA believes it is reasonable to construe this aspect of CAA section 111 as included within the EPA's obligation to determine the BSER. While states are better positioned to evaluate source-specific factors and circumstances in establishing standards of performance, the EPA agrees with commenters that because the EPA evaluates components such as cost of emission reductions and environmental impacts on a broader, systemwide scale when determining the BSER, if a state instead were to determine the degree of emission limitation achievable for the sources within its borders, these factors will naturally be re-balanced on a smaller scale than the EPA's calculation and likely re-define the BSER in the process. Under the cooperative federalism structure of CAA section 111, the EPA determines the BSER and the associated level of stringency (*i.e.,* the degree of emission limitation achievable through application of the BSER), but states may where appropriate relax this level of stringency when establishing standards of performance by accounting for source-specific factors such as remaining useful life. Accordingly, given the EPA's role in determining the BSER, the EPA is retaining the requirement from the original implementing regulations that emission guidelines reflect the degree of emission limitation achievable through application of the BSER, rather than finalizing the proposed change that emission guidelines provide information on such degree of emission limitation achievable.

D. Updates to Timing Requirements

The timing requirements in the existing implementing regulations for state plan submissions, the EPA's action on state plan submissions, and the EPA's promulgation of federal plans generally track the timing requirements for SIPs and federal implementation plans (FIPs) under the 1970 version of the CAA. The existing implementing regulations at 60.23(a)(1) require state plans to be submitted to the EPA within nine months after publication of final emission guidelines, unless otherwise specified in emission guidelines. Congress subsequently revised the SIP and FIP timing requirements in section 110 as part of the 1990 CAA Amendments. The EPA proposed to update accordingly the timing requirements regarding state and federal plans under CAA section 111(d) to be consistent with the current timing requirements for SIPs and FIPs under section 110.[285]

Commenters contend that premising the proposed longer timelines for state plans based on the timelines for SIPs and FIPs is inappropriate because CAA section 111(d) state plans are narrower in scope and less complex than section 110 SIPs for a number of reasons. According to commenters, these reasons include: (1) Because state plans cover one source category, whereas SIPs cover the different types of sources whose emissions must be reduced to meet an ambient air quality standard; (2) because sources under state plans are required to meet an emission standard expressed as a rate or mass limitation, whereas SIPs are required to assure that ambient air within a state stay below the NAAQS, which requires monitoring, modeling, and other complicated considerations; and (3) EPA already does a substantial percentage of the work for states in the first instance by determining the BSER and the degree of emission limitation achievable through application of the BSER.

While it is correct that the main requirement under CAA section 111(d) is for state plans to establish standards of performance for designated facilities, and that these existing-source performance standards are informed by the degree of emission limitation achievable through application of the BSER that EPA identifies, CAA section 111(d)(1)(B) also requires state plans to include measures that provide for the implementation and enforcement of such standards. The implementing regulations further clarify what those measures may be, such as monitoring, reporting, and recordkeeping requirements, but the regulations do not specify the types of measures that may satisfy those requirements (*e.g.,* what type of monitoring is adequate to measure compliance for a particular source category). Nor do the implementing regulations contain an exhaustive list of implementation and enforcement measures given that the nature of a specific state plan, or individual source subject to a state plan, may necessitate tailored implementation

[285] *See* 84 FR 44746–813.

and enforcement measures that the EPA has not, or cannot, prescribe.

Establishment of standards of performance under CAA section 111(d) state plans also may not be as straightforward as commenters suggest, as states have the authority to consider remaining useful life and other factors in applying a standard to a designated facility. While the EPA defines the degree of emission limitation achievable through application of the BSER, it is the state that must evaluate whether there are source-specific considerations which necessitate development of a different standard than the degree of emission limitation that the EPA identifies. Commenters do not provide any information suggesting development of such standards, or development of appropriate implementation and enforcement measures generally, would take some shorter period of time to formulate and adopt for submission of a state plan than the three years the EPA proposed. Therefore, for these reasons, commenters fail to recognize that while CAA section 111(d) is not the same as CAA section 110 in the scope of its requirements, state plans under CAA section 111(d) have their own complexities and realities that take time to address in the development of state plans.

To the contrary, it has been the EPA's experience over decades in the SIP context that states often do need and take much, if not all, of the three-year period under section 110 for the process of developing and adopting SIPs, even if a required SIP submission is relatively narrow in scope and nature. To the extent the EPA determines a shorter timeline is appropriate for the submission of state plans under CAA section 111(d), for example based on the nature of the pollution problem involved, the EPA has authority under the implementing regulations to impose a shorter deadline in specific emission guidelines. Relatedly, the EPA also proposed that it would be required to propose a federal plan ''within'' two years, and nothing in this provision precludes the EPA from promulgating a federal plan at any period within that span of two years if it deems appropriate.

For all of these reasons and based on its experience, the EPA believes it is at least reasonable to construe Congress's direction that it establish a procedure ''similar'' under that of CAA section 110 to authorize it to provide the same timing requirements for state and federal plans under CAA section 111(d) as Congress provided under CAA section 110, and indeed that this direction may indicate Congress's specific intention that the EPA adopt those same timing requirements. The EPA is finalizing, as part of new implementing regulations, a requirement that states adopt and submit a state plan to the EPA within three years after the notice of the availability of the final emission guidelines. Because of the amount of work, effort, and time required for developing state plans that include unit-specific standards, and implementation and enforcement measures for such standards, the EPA believes that extending the submission date of state plans from nine months to three years is appropriate. Because states have considerable flexibility in implementing CAA section 111(d), this timing also allows states to interact and work with the Agency in the development of their state plans and to minimize the chances of unexpected issues arising that could slow down eventual approval of state plans. The EPA notes that nothing in CAA section 111(d) or the implementing regulations preclude states from submitting state plans earlier than the applicable deadline. The EPA also is finalizing to give itself discretion to determine, in specific emission guidelines, that a shorter time period for the submission of state plans particular to that emission guidelines is appropriate. Such authority is consistent with CAA section 110(a)(1)'s grant of authority to the Administrator to determine that a period shorter than three years is appropriate for the submission of particular SIPs implementing the NAAQS.

Following submission of state plans, the EPA will review plan submittals to determine whether they are ''satisfactory'' pursuant to CAA section 111(d)(2)(A). Given the flexibilities CAA section 111(d) and emission guidelines generally accord to states, and the EPA's prior experience on reviewing and acting on SIPs under section 110, the EPA is extending the period for EPA review and approval or disapproval of plans from the four-month period provided in the 1975 implementing regulations to a twelve-month period after a determination of completeness (either affirmatively by the EPA or by operation of law, see section IV.F. for the new implementing regulations' treatment of completeness) as part of the new implanting regulations. This timeline will provide adequate time for the EPA to review plans and follow notice-and-comment rulemaking procedures to ensure an opportunity for public comment on the EPA's proposed action on a state plan.

The EPA additionally is extending the timing for the EPA to promulgate a federal plan from six months in the existing implementing regulations to two years, as part of the new implementing regulations. This two-year timeline is consistent with the FIP deadline under section 110(c) of the CAA. The EPA is finalizing provisions in the new implementing regulations [286] that provide that it has the authority to promulgate a federal plan within two years if it:

- Finds that a state failed to submit a plan required by emission guidelines and CAA section 111(d);
- Makes a finding that a state plan submission is incomplete, as described under the new completeness requirements and criteria in 40 CFR 60.27a(g); or
- Disapproves a state plan submission.

E. Compliance Deadlines

The previous implementing regulations required that any compliance schedule for state plans extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities.[287] However, as described in section IV.D, the EPA is finalizing updates to the timing requirements for the submission of, and action on, state plans. Consequently, it follows that the requirement for increments of progress also should be updated in order to align with the new timelines. Given that the EPA is finalizing a period of up to 18 months for its action on state plans (*i.e.,* 12 months from the determination that a state plan submission is complete, which could occur up to six months after receipt of the state plan), the EPA believes it is appropriate that the requirement for increments of progress should attach to plans that contain compliance periods that are longer than the period provided for the EPA's review of such plans. This way, sources subject to a plan will have more certainty that their regulatory compliance obligations would not change between the period when a state plan is due and when the EPA acts on a plan. Accordingly, the EPA is requiring that states include provisions for increments of progress where their state plans contain compliance schedules longer than 24 months from

[286] 40 CFR 60.27a(c).

[287] 40 CFR 60.24(e)(1).

the date when state plans are due for particular emission guidelines.

F. Completeness Criteria

Similar to requirements regarding determinations of completeness under CAA section 110(k)(1), the EPA is finalizing completeness criteria that provide the Agency with a means to determine whether a state plan submission includes the minimum elements necessary for the EPA to act on the submission. The EPA determines completeness simply by comparing the state's submission against these completeness criteria. In the case of SIPs under CAA section 110(k)(1), the EPA promulgated completeness criteria in 1990 at appendix V to 40 CFR part 51.[288] The EPA is adopting criteria similar to the criteria set out at section 2.0 of appendix V for determining the completeness of submissions under CAA section 111(d).

The EPA notes that the addition of completeness criteria in the framework regulations does not alter any of the submission requirements states already have under any applicable emission guidelines. The completeness criteria in this action are those that would generally apply to all plan submissions under CAA section 111(d), but specific emission guidelines may supplement these general criteria with additional requirements.

The completeness criteria that the EPA is finalizing in this action can be grouped into administrative materials and technical support. For administrative materials, the completeness criteria mirror criteria for SIP submissions because the two programs have similar administrative processes. Under these criteria, the submittal must include the following:

(1) A formal letter of submittal from the Governor or the Governor's designee requesting EPA approval of the plan or revision thereof;

(2) Evidence that the state has adopted the plan in the state code or body of regulations; or issued the permit, order, or consent agreement (hereafter ''document'') in final form. That evidence must include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date;

(3) Evidence that the state has the necessary legal authority under state law to adopt and implement the plan;

(4) A copy of the official state regulation(s) or document(s) submitted for approval and incorporated by reference into the plan, signed, stamped, and dated by the appropriate state official indicating that they are fully adopted and enforceable by the state. The effective date of the regulation or document must, whenever possible, be indicated in the document itself. The state's electronic copy must be an exact duplicate of the hard copy. For revisions to the approved plan, the submission must indicate the changes made to the approved plan by redline/strikethrough;

(5) Evidence that the state followed all applicable procedural requirements of the state's regulations, laws, and constitution in conducting and completing the adoption/issuance of the plan;

(6) Evidence that public notice was given of the plan or plan revisions with procedures consistent with the requirements of 40 CFR 60.23, including the date of publication of such notice;

(7) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the state's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 60.23.; and

(8) Compilation of public comments and the state's response thereto.

In addition, the technical support required for all plans must include each of the following:

(1) Description of the plan approach and geographic scope;

(2) Identification of each designated facility; identification of emission standards for each designated facility; and monitoring, recordkeeping, and reporting requirements that will determine compliance by each designated facility;

(3) Identification of compliance schedules and/or increments of progress;

(4) Demonstration that the state plan submission is projected to achieve emissions performance under the applicable emission guidelines;

(5) Documentation of state recordkeeping and reporting requirements to determine the performance of the plan as a whole; and

(6) Demonstration that each emission standard is quantifiable, permanent, verifiable, and enforceable.

The EPA intends that these criteria generally be applicable to all CAA section 111(d) plans submitted on or after the date on which final new implementing regulations are promulgated, with the proviso that specific emission guidelines may provide otherwise.

Consistent with the requirements of CAA section 110(k)(1)(B) for SIPs, the EPA is finalizing that the EPA will determine whether a state plan is complete (*i.e.,* meets the completeness criteria) by no later than 6 months after the date, if any, by which a state is required to submit the plan. The EPA requires that any plan or plan revision that a state submits to the EPA, and that has not been determined by the EPA by the date 6 months after receipt of the submission to have failed to meet the minimum completeness criteria, shall on that date be deemed by operation of law to be a complete state plan. Then, as previously discussed, the EPA relatedly is finalizing that the EPA will act on a state plan submission through notice-and-comment rulemaking within 12 months after determining a plan is complete either through an affirmative determination or by operation of law.

When plan submissions do not contain the minimum elements, the EPA will find that a state has failed to submit a complete plan through the same process as finding a state has made no submission at all. Specifically, the EPA will notify the state that its submission is incomplete and that it therefore has not submitted a required plan, and the EPA will also publish a finding of failure to submit in the **Federal Register**, which triggers the EPA's obligation to promulgate a federal plan for the state. This determination that a submission is incomplete and that the state has failed to submit a plan is ministerial in nature and requires no exercise of discretion or judgment on the Agency's part, nor does it reflect a judgment on the eventual approvability of the submitted portions of the plan.

G. Standard of Performance

As previously described, the implementing regulations were promulgated in 1975 and effectuated the 1970 version of the CAA as it existed at that time. The 1970 version of CAA section 111(d) required state plans to include ''emission standards'' for existing sources, and consequently the implementing regulations refer to this term. However, as part of the 1977 amendments to the CAA, Congress replaced the term ''emission standard'' in section 111(d) with ''standard of performance.'' The EPA has not since revised the implementing regulations to reflect this change in terminology. For clarity's sake and to better track with statutory requirements, the EPA is determining to include a definition of ''standard of performance'' as part of the new implementing regulations, and to consistently refer to this term as appropriate within those regulations in lieu of referring to an ''emission standard.'' In any event, the current definition of ''emission standard'' in the implementing regulations is incomplete and would need to be revised. For

[288] 55 FR 5830; February 16, 1990.

example, the definition encompasses equipment standards, which is an alternative form of standard provided for in CAA section 111(h) under certain circumstances. However, CAA section 111(h) provides for other forms of alternative standards, such as work practice standards, which are not covered by the existing regulatory definition of ''emission standard.'' Furthermore, the definition of ''emission standard'' encompasses allowance systems, a reference that was added as part of the EPA's CAMR.[289] This rule was vacated by the D.C. Circuit, and therefore this added component to the definition of ''emission standard'' had no legal effect because of the Court's vacatur. Consistent with the Court's opinion, the EPA signaled its intent to remove this reference as part of its MATS rule.[290] However, in the final regulatory text of that rulemaking, the EPA did not take action removing this reference, and it remains as a vestigial artifact.

For these reasons, the EPA is replacing the existing definition of ''emission standard'' with a definition of ''standard of performance'' that tracks with the definition provided for under CAA section 111(a)(1). This means a standard of performance for existing sources would be defined as a standard for emissions of air pollutants that reflects the degree of emission limitation achievable through the application by the state of the BSER which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. Several commenters expressed concern that the proposed definition of ''standard of performance'' in conjunction with the proposal to strike the reference to allowance-based systems precluded states from including mass-based standards of performance. Commenters misunderstand the EPA's proposal, which did not propose that the new definition of ''standard of performance'' itself would specify either rate-based or mass-based standards. As explained at proposal, the new definition is intended to track the definition of the same term in CAA section 111(a)(1), which does not specify that standards of performance must be rate or mass-based. Rather, the EPA may determine in particular emission guidelines the appropriate form of the standard that a state plan must include, based on considerations specific to those emission guidelines, such as the BSER determination, the nature of the pollutant and affected source-category being regulated, and other relevant factors. The EPA believes the term ''standard of performance'' alone does not require or preclude that the standard be in rate or mass-based form, whereas the prior definition of ''emission standard'' was actually more restrictive in that it specified rate-based standards and allowance-based systems, but it did not identify other mass-based standards (such as limits) as permissible.

Similarly, other commenters stated that the definition in the implementing regulations should be clarified to encompass unambiguously rates of any kind (*e.g.,* input-based or output-based), quantities, concentrations, or percentage reductions, consistent with statutory language. However, as previously described, the term ''standard of performance'' alone does not specify which form the standard must take, and such specification is appropriately made in a particular emission guideline depending on considerations such as the nature of the BSER, source category, and pollutant for that rule. Therefore, the EPA is finalizing the definition of ''standard of performance'' as proposed and clarifying that the definition alone does not preclude any form of rate or mass-based standards, but particular emission guidelines may specify the appropriate form of standards that a state plan under such guidelines can or cannot include.

The EPA is further finalizing a definition of standard of performance that incorporates CAA section 111(h)'s allowance for design, equipment, work practice, or operational standards as alternative standards of performance under the statutorily prescribed circumstances. The previous implementing regulations allowed for state plans to prescribe equipment specifications when emission rates are ''clearly impracticable'' as determined by the EPA. CAA section 111(h)(1), by contrast, allows for alternative standards such as equipment standards to be promulgated when standards of performance are ''not feasible to prescribe or enforce,'' as those terms are defined under CAA section 111(h)(2). Given the potential discrepancy between the conditions under which alternative standards may be established based on the different terminology used by the statute and existing implementing regulations, the EPA is establishing in the new implementing regulations the ''not feasible to prescribe or enforce'' language as the condition under which alternative standards may be established.

H. Remaining Useful Life and Other Factors Provisions

The EPA believes that the previous implementing regulations' distinction between public health-based and welfare-based pollutants is not a distinction unambiguously required under CAA section 111(d) or any other applicable provision of the statute. The EPA does not believe the nature of the pollutant in terms of its impacts on health and/or welfare impact the manner in which it is regulated under this provision. Particularly, 60.24(c) requires that for health-based pollutants, a state's standards of performance must be of equivalent stringency to the EPA's emission guidelines. However, CAA section 111(d)(1)(B) states that the EPA's regulations ''shall'' permit states to take into account, among other factors, a designated facility's remaining useful life when establishing an appropriate standard of performance. In other words, Congress explicitly envisioned under CAA section 111(d)(1)(B) that states could implement standards of performance that vary from the EPA's emission guidelines under appropriate circumstances. Notably, the pre-existing implementing regulations at § 60.24(f) contain a provision that allows for states to also apply less stringent standards on sources under certain circumstances.[291] However, this provision attaches to the distinction between health-based and welfare-based pollutants and is available to the states only under the EPA's discretion. This provision was also promulgated prior to Congress's addition of the requirement in CAA section 111(d)(1)(B) that the EPA permit states to take into account remaining useful life and other factors, and the terms of the regulatory provision and statutory provision do not match one another, meaning that this provision may not account for all of the factors envisioned under CAA section 111(d)(1)(B). Given all of these considerations, the EPA is finalizing in the new implanting regulations provisions that remove the distinction between health-based and welfare-based pollutants and associated requirements contingent upon this distinction. The EPA is also finalizing a new provision to permit states to take into account remaining useful life, among other

[289] 70 FR 28605.

[290] 77 FR 9304.

[291] The EPA is hereafter no longer referring to 40 CFR 60.24(f) or its corollary under the new implementing regulations as the ''variance provision.'' The EPA is instead using the phrase ''remaining useful life and other factors'' when referring to this provision, as this phrase is consistent with the terminology used in CAA section 111(d)(1) and better reflects the states' role and authority in establishing standards of performance under CAA section 111(d) generally.

factors, in establishing a standard of performance for a particular designated facility, consistent with CAA section 111(d)(1)(B).

Under this new ''remaining useful life and other factors'' provision, these following factors may be considered, among others:

- Unreasonable cost of control resulting from plant age, location, or basic process design;
- Physical impossibility of installing necessary control equipment; or
- Other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable.

Given that there are unique attributes and aspects of each designated facility, it is not possible for the EPA to define each and every circumstance that states may consider when applying a standard of performance under CAA section 111(d); accordingly, this list is not intended to be exclusive of other source-specific factors that a state may permissibly take into account in developing a satisfactory plan establishing standards of performance for existing sources within its jurisdiction. Such ''other factors'' referred to under the remaining useful life and other factors provision may be ones that influence decisions to invest in technologies to meet a potential performance standard. Such other factors may include timing considerations like payback period for investments, the timing of regulatory requirements, and other unit-specific criteria. A state may account for remaining useful life and other factors as it determines appropriate for a specific source, so long as the state adopts a reasonable approach and adequately explains that approach in its submission to the EPA.

V. Statutory and Executive Order Reviews

Additional information about these Statutory and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This final action is an economically significant action that was submitted to the OMB for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the compliance cost, benefit, and net benefit impacts associated with this action in the analytical timeframe of 2023 to 2037. This analysis, which is contained in the Regulatory Impact Analysis (RIA) for this final action, is consistent with Executive Order 12866 and is available in the docket for this action.

In the RIA for this final action, the Agency provides a full benefit-cost analysis of an illustrative policy scenario representing ACE, which models HRI at coal-fired EGUs. This illustrative policy scenario, described in greater detail in section III.F above, represents potential outcomes of state determinations of standards of performance, and compliance with those standards by affected coal-fired EGUs. Throughout the RIA, the illustrative policy scenario is compared against a single baseline. As described in Chapter 2 of the RIA, the EPA believes that a single baseline without the CPP represents a reasonable future against which to assess the potential impacts of the ACE rule. The EPA also provides analysis in Chapter 2 of the RIA that satisfies any need for regulatory impact analysis that may be required by statute or executive order for the repeal of the CPP.

The EPA evaluates the potential regulatory impacts of the illustrative policy scenario using the present value (PV) of costs, benefits, and net benefits, calculated for the timeframe of 2023–2037 from the perspective of 2016, using both a three percent and seven percent end-of-period discount rate. In addition, the EPA presents the assessment of costs, benefits, and net benefits for specific snapshot years, consistent with historic practice. These specific snapshot years are 2025, 2030, and 2035.

The power industry's ''compliance costs'' are represented in this analysis as the change in electric power generation costs between the baseline and illustrative policy scenario, including the cost of monitoring, reporting, and recordkeeping. The EPA also reports the impact on climate benefits from changes in CO_2 and the impact on health benefits attributable to changes in SO_2, NO_X, and $PM_{2.5}$ emissions. More detailed descriptions of the cost and benefit impacts of these rulemakings are presented in section III.F above.

Table 9 presents the PV and equivalent annualized value (EAV) of the estimated costs, domestic climate benefits, ancillary health co-benefits, and net benefits of the illustrative policy scenario for the timeframe of 2023–2037, relative to the baseline. The EAV represents an even-flow of figures over the timeframe of 2023–2037 that would yield an equivalent present value. The EAV is identical for each year of the analysis, in contrast to the year-specific estimates presented earlier for the snapshot years of 2025, 2030, and 2035. Table 10 presents the estimates for the specific snapshot years of 2025, 2030, and 2035.

TABLE 9—PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF COMPLIANCE COSTS, DOMESTIC CLIMATE BENEFITS, ANCILLARY HEALTH CO-BENEFITS, AND NET BENEFITS, ILLUSTRATIVE POLICY SCENARIO, 3 AND 7 PERCENT DISCOUNT RATES, 2023–2037

[Millions of 2016$]

	Costs		Domestic climate benefits		Ancillary health co-benefits		Net benefits	
	3%	7%	3%	7%	3%	7%	3%	7%
Present Value	1,600	970	640	62	4,000 to 9,800	2,000 to 5,000	3,000 to 8,800	1,100 to 4,100.
Equivalent Annualized Value	140	110	53	6.9	330 to 820	220 to 550	250 to 730	120 to 450.

Notes: All estimates are rounded to two significant figures, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The ancillary health co-benefits reflect the sum of the $PM_{2.5}$ and ozone benefits from changes in electricity sector SO_2 and NO_X emissions and reflect the range based on adult mortality functions (*e.g.,* from Krewski et al. (2009) with Smith et al. (2009)[292] to Lepeule et al. (2012) with Jerrett et al. (2009)).[293]

[292] Smith, R.L., Xu, B., Switzer, P., 2009. Reassessing the relationship between ozone and short-term mortality in U.S. urban communities. Inhal. Toxicol. 21 Suppl 2, 37–61. *https://doi.org/10.1080/08958370903161612.*

[293] Jerrett, M., Burnett, R.T., Pope, C.A., Ito, K., Thurston, G., Krewski, D., Shi, Y., Calle, E., Thun, M., 2009. Long-term ozone exposure and mortality. N. Engl. J. Med. 360, 1085–95. *https://doi.org/10.1056/NEJMoa0803894.*

TABLE 10—COMPLIANCE COSTS, DOMESTIC CLIMATE BENEFITS, ANCILLARY HEALTH CO-BENEFITS, AND NET BENEFITS IN 2025, 2030, AND 2035, ILLUSTRATIVE POLICY SCENARIO, 3 AND 7 PERCENT DISCOUNT RATES

[Millions of 2016$]

	Costs		Domestic climate benefits		Ancillary health co-benefits		Net benefits	
	3%	7%	3%	7%	3%	7%	3%	7%
2025	290	290	81	13	390 to 970	360 to 900	180 to 760	84 to 630.
2030	280	280	81	14	490 to 1,200	460 to 1,100	300 to 1,000	200 to 860.
2035	25	25	72	13	550 to 1,400	510 to 1,300	600 to 1,400	500 to 1,200.

Notes: All estimates are rounded to two significant figures, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The ancillary health co-benefits reflect the sum of the $PM_{2.5}$ and ozone benefits from changes in electricity sector SO_2 and NO_X emissions and reflect the range based on adult mortality functions (*e.g.,* from Krewski et al. (2009) with Smith et al. (2009) to Lepeule et al. (2012) with Jerrett et al. (2009)).

In the decision-making process it is useful to consider the change in benefits due to the targeted pollutant relative to the costs. Therefore, in Chapter 6 of the RIA for this final action the Agency presents a comparison of the benefits from the targeted pollutant—CO_2—with the compliance costs. Excluded from this comparison are the benefits from changes in $PM_{2.5}$ and ozone concentrations from changes in SO_2, NO_X, and $PM_{2.5}$ emissions that are projected to accompany changes in CO_2 emissions.

Table 11 presents the PV and EAV of the estimated costs, benefits, and net benefits associated with the targeted pollutant, CO_2, for the timeframe of 2023–2037, relative to the baseline. In Table 11 and Table 12, negative net benefits are indicated with parenthesis.

TABLE 11—PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF COMPLIANCE COSTS, CLIMATE BENEFITS, AND NET BENEFITS ASSOCIATED WITH TARGETED POLLUTANT (CO_2), ILLUSTRATIVE POLICY SCENARIO, 3 AND 7 PERCENT DISCOUNT RATES, 2023–2037

[Millions of 2016$]

	Costs		Domestic climate benefits		Net benefits associated with the targeted pollutant (CO_2)	
	3%	7%	3%	7%	3%	7%
Present Value	1,600	970	640	62	(980)	(910)
Equivalent Annualized Value	140	110	53	6.9	(82)	(100)

Notes: Negative net benefits indicate forgone net benefits. All estimates are rounded to two significant figures, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. This table does not include estimates of ancillary health co-benefits from changes in electricity sector SO_2 and NO_X emissions.

Table 12 presents the costs, benefits, and net benefits associated with the targeted pollutant for specific years, rather than as a PV or EAV as found in Table 11.

TABLE 12—COMPLIANCE COSTS, CLIMATE BENEFITS, AND NET BENEFITS ASSOCIATED WITH TARGETED POLLUTANT (CO_2) IN 2025, 2030, AND 2035, ILLUSTRATIVE POLICY SCENARIO, 3 AND 7 PERCENT DISCOUNT RATES

[Millions of 2016$]

	Costs		Domestic climate benefits		Net benefits associated with the targeted pollutant (CO_2)	
	3%	7%	3%	7%	3%	7%
2025	290	290	81	13	(210)	(280)
2030	280	280	81	14	(200)	(260)
2035	25	25	72	13	47	(11)

Notes: Negative net benefits indicate forgone net benefits. All estimates are rounded to two significant figures, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. This table does not include estimates of ancillary health co-benefits from changes in electricity sector SO_2 and NO_X emissions.

Throughout the RIA for this action, the EPA considers a number of sources of uncertainty, both quantitatively and qualitatively. The RIA also summarizes other potential sources of benefits and costs that may result from these rules that have not been quantified or monetized.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned the EPA ICR number 2503.04. A copy of the ICR can be found in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information collection requirements are based on the recordkeeping and reporting burden associated with developing, implementing, and enforcing a state plan to limit CO_2 emissions from existing sources in the power sector. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart Ba.

Respondents/affected entities: 48—the 48 contiguous states;

Respondent's obligation to respond: The EPA expects state plan submissions from 43 of the 48 contiguous states and negative declarations from Vermont, California, Maine, Idaho, and Rhode Island.

Frequency of response: Yearly.

Total estimated burden: 192,640 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $21,500 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce the approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Specifically, emission guidelines established under CAA section 111(d) do not impose any requirements on regulated entities and, thus, will not have a significant economic impact upon a substantial number of small entities. After emission guidelines are promulgated, states develop and submit to the EPA plans that establish performance standards for existing sources within their jurisdiction, and it is those state requirements that could potentially impact small entities. Our analysis in the accompanying RIA is consistent with the analysis of the analogous situation arising when the EPA establishes NAAQS, which do not impose any requirements on regulated entities. As with the description in the RIA, any impact of a NAAQS on small entities would only arise when states take subsequent action to maintain and/or achieve the NAAQS through their state implementation plans.[294]

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

This action does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate or the private sector in any one year. Specifically, the emission guidelines proposed under CAA section 111(d) do not impose any direct compliance requirements on regulated entities, apart from the requirement for states to develop state plans. The burden for states to develop state plans in the three-year period following promulgation of the rule was estimated and is listed in section IV.A. above, but this burden is estimated to be below $100 million in any one year. Thus, this rule is not subject to the requirements of section 203 or section 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because, as described in 2 U.S.C. 1531–38, it contains no regulatory requirements that might significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

The EPA has concluded that this action may have federalism implications because it might impose substantial direct compliance costs on state or local governments, and the federal government will not provide the funds necessary to pay those costs. The development of state plans will entail many hours of staff time to develop and coordinate programs for compliance with the proposed rule, as well as time to work with state legislatures as appropriate, and develop a plan submittal. The Agency understands the burden that these actions will have on states and is committing to providing aid and guidance to states through the plan development process. The EPA will be available at the states initiative to provide clarity for developing plans, including standard of performance setting and compliance initiatives.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It would not impose substantial direct compliance costs on tribal governments that have designated facilities located in their area of Indian country. Tribes are not required to develop plans to implement the guidelines under CAA section 111(d) for designated facilities. The EPA notes that this final rule does not directly impose specific requirements on EGU sources, including those located in Indian country; before developing any standards of performance for existing sources on tribal land, the EPA would consult with leaders from affected tribes. This action also will not have substantial direct costs or impacts on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes, as

[294] *See American Trucking Ass'n* v. *EPA,* 175 F.3d 1029, 1043–45 (D.C. Cir. 1999) (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities).

specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the action.

Executive Order 13175 requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The EPA has concluded that this action does not have tribal implications as specified in E.O. 13175. It would not impose substantial direct compliance costs on tribal governments that have designated facilities located in their area of Indian country. Tribes are not required to develop plans to implement the guidelines under CAA section 111(d) for designated facilities. This action also will not have substantial direct cost or impacts on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175.

Consistent with EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action to provide an opportunity to have meaningful and timely input. On August 24, 2018, consultation letters were sent to 584 tribal leaders that provided information and offered consultation regarding the EPA's development of this rule. On August 30, 2018, the EPA provided a presentation overview on the Proposal: Affordable Clean Energy (Rule) on the monthly National Tribal Air Association/EPA Air Policy call. At the request of the tribes, two consultation meetings were held: One with the Navajo Nation on October 11, 2018, and one with the Samish Indian Nation on October 16, 2018. The Samish Indian Nation opened their consultation to other tribes—also participating in this meeting for informational purposes only were seven tribes (Blue Lake Rancheria, Cherokee Nation Environmental Program, La Jolla Band of Luiseño Indians, Leech Lake Band of Ojibwe, Muscogee (Creek) Nation Office of Environmental Services, Nez Perce Tribe, The Quapaw Tribe) and the National Tribal Air Association. In the meetings, the tribes were presented information from the proposal. The tribes asked general clarifying questions and indicated that they would submit formal comments. Comments on the proposal were received from the Navajo Nation, the Samish Indian Nation, Blue Lake Rancheria, Leech Lake Band of Ojibwe, Nez Perce Tribe, and the National Tribal Air Association, in addition to the Keweenaw Bay Indian Community, the Fond du Lac Band, the 1854 Treaty Authority, and the Sac and Fox Nation. Tribal commenters insisted on meaningful government-to-government consultation with potentially impacted tribes, and that the final rule require states to consult with indigenous and vulnerable communities as they develop state plans. More specific comments can be found in the docket.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866. The EPA believes that this action will achieve CO_2 emission reductions resulting from implementation of these emission guidelines, as well as ozone and $PM_{2.5}$ emission reductions as a co-benefit, and will further improve children's health.

Moreover, this action does not affect the level of public health and environmental protection already being provided by existing NAAQS, including ozone and $PM_{2.5}$, and other mechanisms in the CAA. This action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action, which is a significant regulatory energy action under Executive Order 12866, is likely to have a significant effect on the supply, distribution, or use of energy. Specifically, the EPA estimated in the RIA that the rule could result in more than a one percent decrease in coal production in 2025 (or a reduction of more than a 5 million tons per year) and less than a one percent reduction in natural gas use in the power sector (or more than a 25 million MCF reduction in production on an annual basis). The energy impacts the EPA estimates from these rules may be under- or over-estimates of the true energy impacts associated with this action. For more information on the estimated energy effects, please refer to the RIA for these rulemakings, which is in the public docket.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is unlikely to have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA believes that this action will achieve CO_2 emission reductions resulting from implementation of these final guidelines, as well as ozone and $PM_{2.5}$ emission reductions as a co-benefit, and will further improve environmental justice communities' health as discussed in the RIA.

With regards to the repeal, Chapter 2 of the RIA explains why the EPA believes that the power sector is already on path to achieve the CO_2 reductions required by the CPP, therefore the EPA does not believe it would have any significant impact on EJ effected communities.

With regards to ACE, as described in Chapter 4 of the RIA, the EPA finds that most of the eastern U.S. will experience PM and ozone-related benefits as a result of this action. While the EPA expects areas in the southeastern U.S. to experience a modest increase in fine particle levels, areas including the Midwest will experience reduced levels of PM, yielding significant benefits in the form of fewer premature deaths and illnesses. On balance, the positive benefits of this action significantly outweigh the estimated disbenefits.

Moreover, this action does not affect the level of public health and environmental protection already being provided by existing NAAQS, including ozone and $PM_{2.5}$, and other mechanisms in the CAA.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Statutory Authority

The statutory authority for this action is provided by sections 111, 301, and 307(d)(1)(V) of the CAA, as amended (42 U.S.C. 7411, 7601, 7607(d)(1)(V)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 19, 2019.

Andrew R. Wheeler,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Add subpart Ba to read as follows:

Subpart Ba—Adoption and Submittal of State Plans for Designated Facilities

Sec.

§ 60.20a Applicability.

(a) The provisions of this subpart apply upon publication of a final emission guideline under § 60.22a(a) if implementation of such final guideline is ongoing as of July 8, 2019 or if the final guideline is published after July 8, 2019.

(1) Each emission guideline promulgated under this part is subject to the requirements of this subpart, except that each emission guideline may include specific provisions in addition to or that supersede requirements of this subpart. Each emission guideline must identify explicitly any provision of this subpart that is superseded.

(2) Terms used throughout this part are defined in § 60.21a or in the Clean Air Act (Act) as amended in 1990, except that emission guidelines promulgated as individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 60.21a.

(b) No standard of performance or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (section 112, Part C or D, or any other authority of this Act), or a standard issued under State authority.

§ 60.21a Definitions.

Terms used but not defined in this subpart shall have the meaning given them in the Act and in subpart A of this part:

(a) *Designated pollutant* means any air pollutant, the emissions of which are subject to a standard of performance for new stationary sources, but for which air quality criteria have not been issued and that is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Act.

(b) *Designated facility* means any existing facility (see § 60.2) which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility (see § 60.2).

(c) *Plan* means a plan under section 111(d) of the Act which establishes standards of performance for designated pollutants from designated facilities and provides for the implementation and enforcement of such standards of performance.

(d) *Applicable plan* means the plan, or most recent revision thereof, which has been approved under § 60.27a(b) or promulgated under § 60.27a(d).

(e) *Emission guideline* means a guideline set forth in subpart C of this part, or in a final guideline document published under § 60.22a(a), which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator has determined has been adequately demonstrated for designated facilities.

(f) *Standard of performance* means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated, including, but not limited to a legally enforceable regulation setting forth an allowable rate or limit of emissions into the atmosphere, or prescribing a design, equipment, work practice, or operational standard, or combination thereof.

(g) *Compliance schedule* means a legally enforceable schedule specifying a date or dates by which a source or category of sources must comply with specific standards of performance contained in a plan or with any increments of progress to achieve such compliance.

(h) *Increments of progress* means steps to achieve compliance which must be taken by an owner or operator of a designated facility, including:

(1) Submittal of a final control plan for the designated facility to the appropriate air pollution control agency;

(2) Awarding of contracts for emission control systems or for process modifications, or issuance of orders for the purchase of component parts to accomplish emission control or process modification;

(3) Initiation of on-site construction or installation of emission control equipment or process change;

(4) Completion of on-site construction or installation of emission control equipment or process change; and

(5) Final compliance.

(i) *Region* means an air quality control region designated under section 107 of the Act and described in part 81 of this chapter.

(j) *Local agency* means any local governmental agency.

§ 60.22a Publication of emission guidelines.

(a) Concurrently upon or after proposal of standards of performance for the control of a designated pollutant from affected facilities, the Administrator will publish a draft emission guideline containing information pertinent to control of the designated pollutant from designated facilities. Notice of the availability of the draft emission guideline will be published in the **Federal Register** and public comments on its contents will be invited. After consideration of public comments and upon or after promulgation of standards of performance for control of a designated pollutant from affected facilities, a final emission guideline will be published and notice of its availability will be published in the **Federal Register**.

(b) Emission guidelines published under this section will provide information for the development of State plans, such as:

(1) Information concerning known or suspected endangerment of public health or welfare caused, or contributed to, by the designated pollutant.

(2) A description of systems of emission reduction which, in the

judgment of the Administrator, have been adequately demonstrated.

(3) Information on the degree of emission limitation which is achievable with each system, together with information on the costs, nonair quality health environmental effects, and energy requirements of applying each system to designated facilities.

(4) Incremental periods of time normally expected to be necessary for the design, installation, and startup of identified control systems.

(5) The degree of emission limitation achievable through the application of the best system of emission reduction (considering the cost of such achieving reduction and any nonair quality health and environmental impact and energy requirements) that has been adequately demonstrated for designated facilities, and the time within which compliance with standards of performance can be achieved. The Administrator may specify different degrees of emission limitation or compliance times or both for different sizes, types, and classes of designated facilities when costs of control, physical limitations, geographical location, or similar factors make subcategorization appropriate.

(6) Such other available information as the Administrator determines may contribute to the formulation of State plans.

(c) The emission guidelines and compliance times referred to in paragraph (b)(5) of this section will be proposed for comment upon publication of the draft guideline document, and after consideration of comments will be promulgated in subpart C of this part with such modifications as may be appropriate.

§ 60.23a Adoption and submittal of State plans; public hearings.

(a)(1) Unless otherwise specified in the applicable subpart, within three years after notice of the availability of a final emission guideline is published under § 60.22a(a), each State shall adopt and submit to the Administrator, in accordance with § 60.4, a plan for the control of the designated pollutant to which the emission guideline applies.

(2) At any time, each State may adopt and submit to the Administrator any plan revision necessary to meet the requirements of this subpart or an applicable subpart of this part.

(b) If no designated facility is located within a State, the State shall submit a letter of certification to that effect to the Administrator within the time specified in paragraph (a) of this section. Such certification shall exempt the State from the requirements of this subpart for that designated pollutant.

(c) The State shall, prior to the adoption of any plan or revision thereof, conduct one or more public hearings within the State on such plan or plan revision in accordance with the provisions under this section.

(d) Any hearing required by paragraph (c) of this section shall be held only after reasonable notice. Notice shall be given at least 30 days prior to the date of such hearing and shall include:

(1) Notification to the public by prominently advertising the date, time, and place of such hearing in each region affected. This requirement may be satisfied by advertisement on the internet;

(2) Availability, at the time of public announcement, of each proposed plan or revision thereof for public inspection in at least one location in each region to which it will apply. This requirement may be satisfied by posting each proposed plan or revision on the internet;

(3) Notification to the Administrator;

(4) Notification to each local air pollution control agency in each region to which the plan or revision will apply; and

(5) In the case of an interstate region, notification to any other State included in the region.

(e) The State may cancel the public hearing through a method it identifies if no request for a public hearing is received during the 30 day notification period under paragraph (d) of this section and the original notice announcing the 30 day notification period states that if no request for a public hearing is received the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.

(f) The State shall prepare and retain, for a minimum of 2 years, a record of each hearing for inspection by any interested party. The record shall contain, as a minimum, a list of witnesses together with the text of each presentation.

(g) The State shall submit with the plan or revision:

(1) Certification that each hearing required by paragraph (c) of this section was held in accordance with the notice required by paragraph (d) of this section; and

(2) A list of witnesses and their organizational affiliations, if any, appearing at the hearing and a brief written summary of each presentation or written submission.

(h) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures designed to insure public participation in the matters for which hearings are required and public notification of the opportunity to participate if, in the judgment of the Administrator, the procedures, although different from the requirements of this subpart, in fact provide for adequate notice to and participation of the public. The Administrator may impose such conditions on his approval as he deems necessary. Procedures approved under this section shall be deemed to satisfy the requirements of this subpart regarding procedures for public hearings.

§ 60.24a Standards of performance and compliance schedules.

(a) Each plan shall include standards of performance and compliance schedules.

(b) Standards of performance shall either be based on allowable rate or limit of emissions, except when it is not feasible to prescribe or enforce a standard of performance. The EPA shall identify such cases in the emission guidelines issued under § 60.22a. Where standards of performance prescribing design, equipment, work practice, or operational standard, or combination thereof are established, the plan shall, to the degree possible, set forth the emission reductions achievable by implementation of such standards, and may permit compliance by the use of equipment determined by the State to be equivalent to that prescribed.

(1) Test methods and procedures for determining compliance with the standards of performance shall be specified in the plan. Methods other than those specified in appendix A to this part or an applicable subpart of this part may be specified in the plan if shown to be equivalent or alternative methods as defined in § 60.2.

(2) Standards of performance shall apply to all designated facilities within the State. A plan may contain standards of performance adopted by local jurisdictions provided that the standards are enforceable by the State.

(c) Except as provided in paragraph (e) of this section, standards of performance shall be no less stringent than the corresponding emission guideline(s) specified in subpart C of this part, and final compliance shall be required as expeditiously as practicable, but no later than the compliance times specified in an applicable subpart of this part.

(d) Any compliance schedule extending more than 24 months from the date required for submittal of the

plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. Unless otherwise specified in the applicable subpart, increments of progress must include, where practicable, each increment of progress specified in § 60.21a(h) and must include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward final compliance.

(e) In applying a standard of performance to a particular source, the State may take into consideration factors, such as the remaining useful life of such source, provided that the State demonstrates with respect to each such facility (or class of such facilities):

(1) Unreasonable cost of control resulting from plant age, location, or basic process design;

(2) Physical impossibility of installing necessary control equipment; or

(3) Other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable.

(f) Nothing in this subpart shall be construed to preclude any State or political subdivision thereof from adopting or enforcing:

(1) Standards of performance more stringent than emission guidelines specified in subpart C of this part or in applicable emission guidelines; or

(2) Compliance schedules requiring final compliance at earlier times than those specified in subpart C of this part or in applicable emission guidelines.

§ 60.25a Emission inventories, source surveillance, reports.

(a) Each plan shall include an inventory of all designated facilities, including emission data for the designated pollutants and information related to emissions as specified in appendix D to this part. Such data shall be summarized in the plan, and emission rates of designated pollutants from designated facilities shall be correlated with applicable standards of performance. As used in this subpart, ''correlated'' means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under applicable standards of performance.

(b) Each plan shall provide for monitoring the status of compliance with applicable standards of performance. Each plan shall, as a minimum, provide for:

(1) Legally enforceable procedures for requiring owners or operators of designated facilities to maintain records and periodically report to the State information on the nature and amount of emissions from such facilities, and/or such other information as may be necessary to enable the State to determine whether such facilities are in compliance with applicable portions of the plan. Submission of electronic documents shall comply with the requirements of 40 CFR part 3 (Electronic reporting).

(2) Periodic inspection and, when applicable, testing of designated facilities.

(c) Each plan shall provide that information obtained by the State under paragraph (b) of this section shall be correlated with applicable standards of performance (see § 60.25a(a)) and made available to the general public.

(d) The provisions referred to in paragraphs (b) and (c) of this section shall be specifically identified. Copies of such provisions shall be submitted with the plan unless:

(1) They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act; and

(2) The State demonstrates:

(i) That the provisions are applicable to the designated pollutant(s) for which the plan is submitted, and

(ii) That the requirements of § 60.26a are met.

(e) The State shall submit reports on progress in plan enforcement to the Administrator on an annual (calendar year) basis, commencing with the first full report period after approval of a plan or after promulgation of a plan by the Administrator. Information required under this paragraph must be included in the annual report required by § 51.321 of this chapter.

(f) Each progress report shall include:

(1) Enforcement actions initiated against designated facilities during the reporting period, under any standard of performance or compliance schedule of the plan.

(2) Identification of the achievement of any increment of progress required by the applicable plan during the reporting period.

(3) Identification of designated facilities that have ceased operation during the reporting period.

(4) Submission of emission inventory data as described in paragraph (a) of this section for designated facilities that were not in operation at the time of plan development but began operation during the reporting period.

(5) Submission of additional data as necessary to update the information submitted under paragraph (a) of this section or in previous progress reports.

(6) Submission of copies of technical reports on all performance testing on designated facilities conducted under paragraph (b)(2) of this section, complete with concurrently recorded process data.

§ 60.26a Legal authority.

(a) Each plan or plan revision shall show that the State has legal authority to carry out the plan or plan revision, including authority to:

(1) Adopt standards of performance and compliance schedules applicable to designated facilities.

(2) Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.

(3) Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.

(4) Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable standards of performance.

(b) The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless:

(1) They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act; and

(2) The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.

(c) The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.

(d) A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal

authority necessary to carry out that portion of the plan.

(e) The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.

§ 60.27a Actions by the Administrator.

(a) The Administrator may, whenever he determines necessary, shorten the period for submission of any plan or plan revision or portion thereof.

(b) After determination that a plan or plan revision is complete per the requirements of § 60.27a(g), the Administrator will take action on the plan or revision. The Administrator will, within twelve months of finding that a plan or plan revision is complete, approve or disapprove such plan or revision or each portion thereof.

(c) The Administrator will promulgate, through notice-and-comment rulemaking, a federal plan, or portion thereof, at any time within two years after the Administrator:

(1) Finds that a State fails to submit a required plan or plan revision or finds that the plan or plan revision does not satisfy the minimum criteria under paragraph (g) of this section; or

(2) Disapproves the required State plan or plan revision or any portion thereof, as unsatisfactory because the applicable requirements of this subpart or an applicable subpart under this part have not been met.

(d) The Administrator will promulgate a final federal plan as described in paragraph (c) of this section unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such federal plan.

(e)(1) Except as provided in paragraph (e)(2) of this section, a federal plan promulgated by the Administrator under this section will prescribe standards of performance of the same stringency as the corresponding emission guideline(s) specified in the final emission guideline published under § 60.22a(a) and will require compliance with such standards as expeditiously as practicable but no later than the times specified in the emission guideline.

(2) Upon application by the owner or operator of a designated facility to which regulations proposed and promulgated under this section will apply, the Administrator may provide for the application of less stringent standards of performance or longer compliance schedules than those otherwise required by this section in accordance with the criteria specified in § 60.24a(e).

(f) Prior to promulgation of a federal plan under paragraph (d) of this section, the Administrator will provide the opportunity for at least one public hearing in either:

(1) Each State that failed to submit a required complete plan or plan revision, or whose required plan or plan revision is disapproved by the Administrator; or

(2) Washington, DC or an alternate location specified in the **Federal Register**.

(g) Each plan or plan revision that is submitted to the Administrator shall be reviewed for completeness as described in paragraphs (g)(1) through (3) of this section.

(1) *General.* Within 60 days of the Administrator's receipt of a state submission, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria for completeness have been met. Any plan or plan revision that a State submits to the EPA, and that has not been determined by the EPA by the date 6 months after receipt of the submission to have failed to meet the minimum criteria, shall on that date be deemed by operation of law to meet such minimum criteria. Where the Administrator determines that a plan submission does not meet the minimum criteria of this paragraph, the State will be treated as not having made the submission and the requirements of § 60.27a regarding promulgation of a federal plan shall apply.

(2) *Administrative criteria.* In order to be deemed complete, a State plan must contain each of the following administrative criteria:

(i) A formal letter of submittal from the Governor or her designee requesting EPA approval of the plan or revision thereof;

(ii) Evidence that the State has adopted the plan in the state code or body of regulations; or issued the permit, order, consent agreement (hereafter ''document'') in final form. That evidence must include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date;

(iii) Evidence that the State has the necessary legal authority under state law to adopt and implement the plan;

(iv) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made (such as redline/strikethrough) to the existing approved plan, where applicable. The submittal must be a copy of the official state regulation or document signed, stamped and dated by the appropriate state official indicating that it is fully enforceable by the State. The effective date of the regulation or document must, whenever possible, be indicated in the document itself. The State's electronic copy must be an exact duplicate of the hard copy. If the regulation/document provided by the State for approval and incorporation by reference into the plan is a copy of an existing publication, the State submission should, whenever possible, include a copy of the publication cover page and table of contents;

(v) Evidence that the State followed all of the procedural requirements of the state's laws and constitution in conducting and completing the adoption and issuance of the plan;

(vi) Evidence that public notice was given of the proposed change with procedures consistent with the requirements of § 60.23a, including the date of publication of such notice;

(vii) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable and consistent with the public hearing requirements in § 60.23a;

(viii) Compilation of public comments and the State's response thereto; and

(ix) Such other criteria for completeness as may be specified by the Administrator under the applicable emission guidelines.

(3) *Technical criteria.* In order to be deemed complete, a State plan must contain each of the following technical criteria:

(i) Description of the plan approach and geographic scope;

(ii) Identification of each designated facility, identification of standards of performance for the designated facilities, and monitoring, recordkeeping and reporting requirements that will determine compliance by each designated facility;

(iii) Identification of compliance schedules and/or increments of progress;

(iv) Demonstration that the State plan submittal is projected to achieve emissions performance under the applicable emission guidelines;

(v) Documentation of state recordkeeping and reporting requirements to determine the performance of the plan as a whole; and

(vi) Demonstration that each emission standard is quantifiable, non-duplicative, permanent, verifiable, and enforceable.

§ 60.28a Plan revisions by the State.

(a) Any revision to a state plan shall be adopted by such State after reasonable notice and public hearing. For plan revisions required in response to a revised emission guideline, such plan revisions shall be submitted to the Administrator within three years, or shorter if required by the Administrator, after notice of the availability of a final revised emission guideline is published under § 60.22a. All plan revisions must be submitted in accordance with the procedures and requirements applicable to development and submission of the original plan.

(b) A revision of a plan, or any portion thereof, shall not be considered part of an applicable plan until approved by the Administrator in accordance with this subpart.

§ 60.29a Plan revisions by the Administrator.

After notice and opportunity for public hearing in each affected State, the Administrator may revise any provision of an applicable federal plan if:

(a) The provision was promulgated by the Administrator; and

(b) The plan, as revised, will be consistent with the Act and with the requirements of this subpart.

Subpart UUUU [Removed]

■ 3. Remove subpart UUUU.

■ 4. Add subpart UUUUa to read as follows:

Subpart UUUUa—Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units

Introduction

Sec.

Introduction

§ 60.5700a What is the purpose of this subpart?

This subpart establishes emission guidelines and approval criteria for State plans that establish standards of performance limiting greenhouse gas (GHG) emissions from an affected steam generating unit. An affected steam generating unit for the purposes of this subpart, is referred to as a designated facility. These emission guidelines are developed in accordance with section 111(d) of the Clean Air Act and subpart Ba of this part. To the extent any requirement of this subpart is inconsistent with the requirements of subpart A or Ba of this part, the requirements of this subpart will apply.

§ 60.5705a Which pollutants are regulated by this subpart?

(a) The pollutants regulated by this subpart are greenhouse gases. The emission guidelines for greenhouse gases established in this subpart are heat rate improvements which target achieving lower carbon dioxide (CO_2) emission rates at designated facilities.

(b) PSD and Title V Thresholds for Greenhouse Gases.

(1) For the purposes of § 51.166(b)(49)(ii) of this chapter, with respect to GHG emissions from facilities, the ''pollutant that is subject to the standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is subject to regulation under the Act as defined in § 51.166(b)(48) of this chapter and in any State Implementation Plan (SIP) approved by the EPA that is interpreted to incorporate, or specifically incorporates, § 51.166(b)(48) of this chapter.

(2) For the purposes of § 52.21(b)(50)(ii) of this chapter, with respect to GHG emissions from facilities regulated in the plan, the ''pollutant that is subject to the standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is subject to regulation under the Act as defined in § 52.21(b)(49) of this chapter.

(3) For the purposes of § 70.2 of this chapter, with respect to greenhouse gas emissions from facilities regulated in the plan, the ''pollutant that is subject to any standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is ''subject to regulation'' as defined in § 70.2 of this chapter.

(4) For the purposes of § 71.2 of this chapter, with respect to greenhouse gas emissions from facilities regulated in the plan, the ''pollutant that is subject to any standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is ''subject to regulation'' as defined in § 71.2 of this chapter.

§ 60.5710a Am I affected by this subpart?

If you are the Governor of a State in the contiguous United States with one or more designated facilities that commenced construction on or before January 8, 2014, you are subject to this action and you must submit a State plan to the U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart. If you are the Governor of a State in the contiguous United States with no designated facilities for which construction commenced on or before January 8, 2014, in your State, you must submit a negative declaration letter in place of the State plan.

§ 60.5715a What is the review and approval process for my plan?

The EPA will review your plan according to § 60.27a to approve or disapprove such plan or revision or each portion thereof.

§ 60.5720a What if I do not submit a plan, my plan is incomplete, or my plan is not approvable?

(a) If you do not submit a complete or an approvable plan the EPA will

develop a Federal plan for your State according to § 60.27a. The Federal plan will implement the emission guidelines contained in this subpart. Owners and operators of designated facilities not covered by an approved plan must comply with a Federal plan implemented by the EPA for the State.

(b) After a Federal plan has been implemented in your State, it will be withdrawn when your State submits, and the EPA approves, a plan.

§ 60.5725a In lieu of a State plan submittal, are there other acceptable option(s) for a State to meet its CAA section 111(d) obligations?

A State may meet its CAA section 111(d) obligations only by submitting a State plan submittal or a negative declaration letter (if applicable).

§ 60.5730a Is there an approval process for a negative declaration letter?

The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, the EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, a designated facility for which construction commenced on or before January 8, 2014 is found in your State, you will be found to have failed to submit a plan as required, and a Federal plan implementing the emission guidelines contained in this subpart, when promulgated by the EPA, will apply to that designated facility until you submit, and the EPA approves, a State plan.

State Plan Requirements

§ 60.5735a What must I include in my federally enforceable State plan?

(a) You must include the components described in paragraphs (a)(1) through (4) of this section in your plan submittal. The final plan must meet the requirements of, and include the information required under, § 60.5740a.

(1) *Identification of designated facilities.* Consistent with § 60.25a(a), you must identify the designated facilities covered by your plan and all designated facilities in your State that meet the applicability criteria in § 60.5775a. In addition, you must include an inventory of CO_2 emissions from the designated facilities during the most recent calendar year for which data is available prior to the submission of the plan.

(2) *Standards of performance.* You must provide a standard of performance for each designated facility according to § 60.5755a and compliance periods for each standard of performance according to § 60.5750a. Each standard of performance must reflect the degree of emission limitation achievable through application of the heat rate improvements described in § 60.5740a. In applying the heat rate improvements described in § 60.5740a, a state may consider remaining useful life and other factors, as provided for in § 60.24a(e).

(3) *Identification of applicable monitoring, reporting, and recordkeeping requirements for each designated facility.* You must include in your plan all applicable monitoring, reporting and recordkeeping requirements for each designated facility and the requirements must be consistent with or no less stringent than the requirements specified in § 60.5785a.

(4) *State reporting.* Your plan must include a description of the process, contents, and schedule for State reporting to the EPA about plan implementation and progress, including information required under § 60.5795a.

(b) You must follow the requirements of subpart Ba of this part and demonstrate that they were met in your State plan.

§ 60.5740a What must I include in my plan submittal?

(a) In addition to the components of the plan listed in § 60.5735a, a state plan submittal to the EPA must include the information in paragraphs (a)(1) through (8) of this section. This information must be submitted to the EPA as part of your plan submittal but will not be codified as part of the federally enforceable plan upon approval by EPA.

(1) You must include a summary of how you determined each standard of performance for each designated facility according to § 60.5755a(a). You must include in the summary an evaluation of the applicability of each of the following heat rate improvements to each designated facility:

(i) Neural network/intelligent sootblowers;

(ii) Boiler feed pumps;

(iii) Air heater and duct leakage control;

(iv) Variable frequency drives;

(v) Blade path upgrades for steam turbines;

(vi) Redesign or replacement of economizer; and

(vii) Improved operating and maintenance practices.

(2)(i) As part of the summary under paragraph (a)(1) of this section regarding the applicability of each heat rate improvement to each designated facility, you must include an evaluation of the following degree of emission limitation achievable through application of the heat rate improvements:

TABLE 1 TO PARAGRAPH (A)(2)(I)—MOST IMPACTFUL HRI MEASURES AND RANGE OF THEIR HRI POTENTIAL (%) BY EGU SIZE

HRI Measure	< 200 MW		200–500 MW		>500 MW	
	Min	Max	Min	Max	Min	Max
Neural Network/Intelligent Sootblowers	0.5	1.4	0.3	1.0	0.3	0.9
Boiler Feed Pumps	0.2	0.5	0.2	0.5	0.2	0.5
Air Heater & Duct Leakage Control	0.1	0.4	0.1	0.4	0.1	0.4
Variable Frequency Drives	0.2	0.9	0.2	1.0	0.2	1.0
Blade Path Upgrade (Steam Turbine)	0.9	2.7	1.0	2.9	1.0	2.9
Redesign/Replace Economizer	0.5	0.9	0.5	1.0	0.5	1.0
Improved Operating and Maintenance (O&M) Practices	Can range from 0 to > 2.0% depending on the unit's historical O&M practices.					

(ii) In applying a standard of performance, if you consider remaining useful life and other factors for a designated facility as provided in § 60.24a(e), you must include a summary of the application of the relevant factors in deriving a standard of performance.

(3) You must include a demonstration that each designated facility's standard of performance is quantifiable,

permanent, verifiable, and enforceable according to § 60.5755a.

(4) Your plan demonstration must include the information listed in paragraphs (a)(4)(i) through (v) of this section as applicable.

(i) A summary of each designated facility's anticipated future operation characteristics, including:

(A) Annual generation;

(B) CO_2 emissions;

(C) Fuel use, fuel prices, fuel carbon content;

(D) Fixed and variable operations and maintenance costs;

(E) Heat rates; and

(F) Electric generation capacity and capacity factors.

(ii) A timeline for implementation.

(iii) All wholesale electricity prices.

(iv) A time period of analysis, which must extend through at least 2035.

(v) A demonstration that each standard of performance included in your plan meets the requirements of § 60.5755a.

(5) Your plan submittal must include certification that a hearing required under § 60.23a(c)on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission, pursuant to the requirements of § 60.23a(g).

(6) Your plan submittal must include supporting material for your plan including:

(i) Materials demonstrating the State's legal authority to implement and enforce each component of its plan, including standards of performance, pursuant to the requirements of §§ 60.26a and 60.5740a(a)(6);

(ii) Materials supporting calculations for designated facility's standards of performance according to § 60.5755a; and

(iii) Any other materials necessary to support evaluation of the plan by the EPA.

(b) You must submit your final plan to the EPA according to § 60.5800a.

§ 60.5745a What are the timing requirements for submitting my plan?

You must submit a plan with the information required under § 60.5740a by July 8, 2022.

§ 60.5750a What schedules and compliance periods must I include in my plan?

The EPA is superseding the requirement at § 60.22a(b)(5) for EPA to provide compliance timelines in the emission guidelines. Each standard of performance for designated facilities regulated under the plan must include a compliance period that ensures the standard of performance reflects the degree of emission limitation achievable though application of the heat rate improvements used to calculate the standard. The schedules and compliance periods included in a plan must follow the requirements of § 60.24a.

§ 60.5755a What standards of performance must I include in my plan?

(a) You must set a standard of performance for each designated facility within the state.

(1) The standard of performance must be an emission performance rate relating mass of CO_2 emitted per unit of energy (*e.g.* pounds of CO_2 emitted per MWh).

(2) In establishing any standard of performance, you must consider the applicability of each of the heat rate improvements and associated degree of emission limitation achievable included in § 60.5740a(a)(1) and (2) to the designated facility. You must include a demonstration in your plan submission for how you considered each heat rate improvement and associated degree of emission limitation achievable in calculating each standard of performance.

(i) In applying a standard of performance to any designated facility, you may consider the source-specific factors included in § 60.24a(e).

(ii) If you consider source-specific factors to apply a standard of performance, you must include a demonstration in your plan submission for how you considered such factors.

(b) Standards of performance for designated facilities included under your plan must be demonstrated to be quantifiable, verifiable, permanent, and enforceable with respect to each designated facility. The plan submittal must include the methods by which each standard of performance meets each of the requirements in paragraphs (c) through (f) of this section.

(c) A designated facility's standard of performance is quantifiable if it can be reliably measured in a manner that can be replicated.

(d) A designated facility's standard of performance is verifiable if adequate monitoring, recordkeeping and reporting requirements are in place to enable the State and the Administrator to independently evaluate, measure, and verify compliance with the standard of performance.

(e) A designated facility's standard of performance is permanent if the standard of performance must be met for each compliance period, unless it is replaced by another standard of performance in an approved plan revision.

(f) A designated facility's standard of performance is enforceable if:

(1) A technically accurate limitation or requirement and the time period for the limitation or requirement are specified;

(2) Compliance requirements are clearly defined;

(3) The designated facility responsible for compliance and liable for violations can be identified;

(4) Each compliance activity or measure is enforceable as a practical matter; and

(5) The Administrator, the State, and third parties maintain the ability to enforce against violations (including if a designated facility does not meet its standard of performance based on its emissions) and secure appropriate corrective actions, in the case of the Administrator pursuant to CAA sections 113(a) through (h), in the case of a State, pursuant to its plan, State law or CAA section 304, as applicable, and in the case of third parties, pursuant to CAA section 304.

§ 60.5760a What is the procedure for revising my plan?

EPA-approved plans can be revised only with approval by the Administrator. The Administrator will approve a plan revision if it is satisfactory with respect to the applicable requirements of this subpart and any applicable requirements of subpart Ba of this part, including the requirements in § 60.5740a. If one (or more) of the elements of the plan set in § 60.5735a require revision, a request must be submitted to the Administrator indicating the proposed revisions to the plan.

§ 60.5765a What must I do to meet my plan obligations?

To meet your plan obligations, you must demonstrate that your designated facilities are complying with their standards of performance as specified in § 60.5755a.

Applicability of Plans to Designated Facilities

§ 60.5770a Does this subpart directly affect EGU owners or operators in my State?

(a) This subpart does not directly affect EGU owners or operators in your State. However, designated facility owners or operators must comply with the plan that a State develops to implement the emission guidelines contained in this subpart.

(b) If a State does not submit a plan to implement and enforce the emission

guidelines contained in this subpart by July 8, 2022, or the date that EPA disapproves a final plan, the EPA will implement and enforce a Federal plan, as provided in § 60.27a(c), applicable to each designated facility within the State that commenced construction on or before January 8, 2014.

§ 60.5775a What designated facilities must I address in my State plan?

(a) The EGUs that must be addressed by your plan are any designated facility that commenced construction on or before January 8, 2014.

(b) A designated facility is a steam generating unit that meets the relevant applicability conditions specified in paragraphs (b)(1) through (3) of this section, as applicable, of this section except as provided in § 60.5780a.

(1) Serves a generator connected to a utility power distribution system with a nameplate capacity greater than 25 MW-net (*i.e.,* capable of selling greater than 25 MW of electricity).

(2) Has a base load rating (*i.e.,* design heat input capacity) greater than 260 GJ/hr (250 MMBtu/hr) heat input of fossil fuel (either alone or in combination with any other fuel).

(3) Is an electric utility steam generating unit that burns coal for more than 10.0 percent of the average annual heat input during the 3 previous calendar years.

§ 60.5780a What EGUs are excluded from being designated facilities?

(a) An EGU that is excluded from being a designated facility is:

(1) An EGU that is subject to subpart TTTT of this part as a result of commencing construction, reconstruction or modification after the subpart TTTT applicability date;

(2) A steam generating unit that is subject to a federally enforceable permit limiting annual net-electric sales to one-third or less of its potential electric output, or 219,000 MWh or less;

(3) A stationary combustion turbine that meets the definition of a simple cycle stationary combustion turbine, a combined cycle stationary combustion turbine, or a combined heat and power combustion turbine;

(4) An IGCC unit;

(5) A non-fossil unit (*i.e.,* a unit that is capable of combusting 50 percent or more non-fossil fuel) that has always limited the use of fossil fuels to 10 percent or less of the annual capacity factor or is subject to a federally enforceable permit limiting fossil fuel use to 10 percent or less of the annual capacity factor;

(6) An EGU that serves a generator along with other steam generating unit(s), IGCC(s), or stationary combustion turbine(s) where the effective generation capacity (determined based on a prorated output of the base load rating of each steam generating unit, IGCC, or stationary combustion turbine) is 25 MW or less;

(7) An EGU that is a municipal waste combustor unit that is subject to subpart Eb of this part;

(8) An EGU that is a commercial or industrial solid waste incineration unit that is subject to subpart CCCC of this part; or

(9) A steam generating unit that fires more than 50 percent non-fossil fuels.

(b) [Reserved]

§ 60.5785a What applicable monitoring, recordkeeping, and reporting requirements do I need to include in my plan for designated facilities?

(a) Your plan must include monitoring, recordkeeping, and reporting requirements for designated facilities. To satisfy this requirement, you have the option of either:

(1) Specifying that sources must report emission and electricity generation data according to part 75 of this chapter; or

(2) Including an alternative monitoring, recordkeeping, and reporting program that includes specifications for the following program elements:

(i) Monitoring plans that specify the monitoring methods, systems, and formulas that will be used to measure CO_2 emissions;

(ii) Monitoring methods to continuously and accurately measure all CO_2 emissions, CO_2 emission rates, and other data necessary to determine compliance or assure data quality;

(iii) Quality assurance test requirements to ensure monitoring systems provide reliable and accurate data for assessing and verifying compliance;

(iv) Recordkeeping requirements;

(v) Electronic reporting procedures and systems; and

(vi) Data validation procedures for ensuring data are complete and calculated consistent with program rules, including procedures for determining substitute data in instances where required data would otherwise be incomplete.

(b) [Reserved]

Recordkeeping and Reporting Requirements

§ 60.5790a What are my recordkeeping requirements?

(a) You must keep records of all information relied upon in support of any demonstration of plan components, plan requirements, supporting documentation, and the status of meeting the plan requirements defined in the plan. After the effective date of the plan, States must keep records of all information relied upon in support of any continued demonstration that the final standards of performance are being achieved.

(b) You must keep records of all data submitted by the owner or operator of each designated facility that is used to determine compliance with each designated facility emissions standard or requirements in an approved State plan, consistent with the designated facility requirements listed in § 60.5785a.

(c) If your State has a requirement for all hourly CO_2 emissions and generation information to be used to calculate compliance with an annual emissions standard for designated facilities, any information that is submitted by the owners or operators of designated facilities to the EPA electronically pursuant to requirements in part 75 of this chapter meets the recordkeeping requirement of this section and you are not required to keep records of information that would be in duplicate of paragraph (b) of this section.

(d) You must keep records at a minimum for 5 years from the date the record is used to determine compliance with a standard of performance or plan requirement. Each record must be in a form suitable and readily available for expeditious review.

§ 60.5795a What are my reporting and notification requirements?

You must submit an annual report as required under § 60.25a(e) and (f).

§ 60.5800a How do I submit information required by these Emission Guidelines to the EPA?

(a) You must submit to the EPA the information required by these emission guidelines following the procedures in paragraphs (b) through (e) of this section unless you submit through the procedure described in paragraph (f) of this section.

(b) All negative declarations, State plan submittals, supporting materials that are part of a State plan submittal, any plan revisions, and all State reports required to be submitted to the EPA by the State plan may be reported through EPA's electronic reporting system to be named and made available at a later date.

(c) Only a submittal by the Governor or the Governor's designee by an electronic submission through SPeCS shall be considered an official submittal to the EPA under this subpart. If the

Governor wishes to designate another responsible official the authority to submit a State plan, the EPA must be notified via letter from the Governor prior to the July 8, 2022, deadline for plan submittal so that the official will have the ability to submit a plan in the SPeCS. If the Governor has previously delegated authority to make CAA submittals on the Governor's behalf, a State may submit documentation of the delegation in lieu of a letter from the Governor. The letter or documentation must identify the designee to whom authority is being designated and must include the name and contact information for the designee and also identify the State plan preparers who will need access to the EPA electronic reporting system. A State may also submit the names of the State plan preparers via a separate letter prior to the designation letter from the Governor in order to expedite the State plan administrative process. Required contact information for the designee and preparers includes the person's title, organization, and email address.

(d) The submission of the information by the authorized official must be in a non-editable format. In addition to the non-editable version all plan components designated as federally enforceable must also be submitted in an editable version.

(e) You must provide the EPA with non-editable and editable copies of any submitted revision to existing approved federally enforceable plan components. The editable copy of any such submitted plan revision must indicate the changes made at the State level, if any, to the existing approved federally enforceable plan components, using a mechanism such as redline/strikethrough. These changes are not part of the State plan until formal approval by EPA.

(f) If, in lieu of the requirements described in paragraphs (b) through (e) of this section, you choose to submit a paper copy or an electronic version by other means you must confer with your EPA Regional Office regarding the additional guidelines for submitting your plan.

Definitions

§ 60.5805a What definitions apply to this subpart?

As used in this subpart, all terms not defined herein will have the meaning given them in the Clean Air Act and in subparts TTTT, A, and Ba of this part.

Air Heater means a device that recovers heat from the flue gas for use in pre-heating the incoming combustion air and potentially for other uses such as coal drying.

Annual capacity factor means the ratio between the actual heat input to an EGU during a calendar year and the potential heat input to the EGU had it been operated for 8,760 hours during a calendar year at the base load rating.

Base load rating means the maximum amount of heat input (fuel) that an EGU can combust on a steady-state basis, as determined by the physical design and characteristics of the EGU at ISO conditions.

Boiler feed pump (or *boiler feedwater pump*) means a device used to pump feedwater into a steam boiler at an EGU. The water may be either freshly supplied or returning condensate produced from condensing steam produced by the boiler.

CO_2 emission rate means for a designated facility, the reported CO_2 emission rate of a designated facility used by a designated facility to demonstrate compliance with its CO_2 standard of performance.

Combined cycle unit means an electric generating unit that uses a stationary combustion turbine from which the heat from the turbine exhaust gases is recovered by a heat recovery steam generating unit to generate additional electricity.

Combined heat and power unit or *CHP unit* (also known as ''cogeneration'') means an electric generating unit that uses a steam-generating unit or stationary combustion turbine to simultaneously produce both electric (or mechanical) and useful thermal output from the same primary energy source.

Compliance period means a discrete time period for a designated facility to comply with a standard of performance.

Designated facility means a steam generating unit that meets the relevant applicability conditions in section § 60.5775a, except as provided in § 60.5780a.

Economizer means a heat exchange device used to capture waste heat from boiler flue gas which is then used to heat the boiler feedwater.

Fossil fuel means natural gas, petroleum, coal, and any form of solid fuel, liquid fuel, or gaseous fuel derived from such material to create useful heat.

Integrated gasification combined cycle facility or *IGCC* means a combined cycle facility that is designed to burn fuels containing 50 percent (by heat input) or more solid-derived fuel not meeting the definition of natural gas plus any integrated equipment that provides electricity or useful thermal output to either the affected facility or auxiliary equipment. The Administrator may waive the 50 percent solid-derived fuel requirement during periods of the gasification system construction, startup and commissioning, shutdown, or repair. No solid fuel is directly burned in the unit during operation.

Intelligent sootblower means an automated system that use process measurements to monitor the heat transfer performance and strategically allocate steam to specific areas to remove ash buildup at a steam generating unit.

ISO conditions means 288 Kelvin (15 °C), 60 percent relative humidity and 101.3 kilopascals pressure.

Nameplate capacity means, starting from the initial installation, the maximum electrical generating output that a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer is capable of producing (in MWe, rounded to the nearest tenth) on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the equipment, or starting from the completion of any subsequent physical change resulting in an increase in the maximum electrical generating output that the equipment is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

Natural gas means a fluid mixture of hydrocarbons (*e.g.,* methane, ethane, or propane), composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot), that maintains a gaseous State under ISO conditions. In addition, natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Finally, natural gas does not include the following gaseous fuels: Landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

Net electric output means the amount of gross generation the generator(s) produce (including, but not limited to, output from steam turbine(s), combustion turbine(s), and gas expander(s)), as measured at the generator terminals, less the electricity used to operate the plant (*i.e.,* auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution

control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step up transformer (*e.g.,* the point of sale).

Net energy output means:

(1) The net electric or mechanical output from the affected facility, plus 100 percent of the useful thermal output measured relative to SATP conditions that is not used to generate additional electric or mechanical output or to enhance the performance of the unit (*e.g.,* steam delivered to an industrial process for a heating application).

(2) For combined heat and power facilities where at least 20.0 percent of the total gross or net energy output consists of electric or direct mechanical output and at least 20.0 percent of the total gross or net energy output consists of useful thermal output on a 12-operating month rolling average basis, the net electric or mechanical output from the designated facility divided by 0.95, plus 100 percent of the useful thermal output; (*e.g.,* steam delivered to an industrial process for a heating application).

Neural network means a computer model that can be used to optimize combustion conditions, steam temperatures, and air pollution at steam generating unit.

Simple cycle combustion turbine means any stationary combustion turbine which does not recover heat from the combustion turbine engine exhaust gases for purposes other than enhancing the performance of the stationary combustion turbine itself.

Standard ambient temperature and pressure (SATP) conditions means 298.15 Kelvin (25 °C, 77 °F) and 100.0 kilopascals (14.504 psi, 0.987 atm) pressure. The enthalpy of water at SATP conditions is 50 Btu/lb.

State agent means an entity acting on behalf of the State, with the legal authority of the State.

Stationary combustion turbine means all equipment, including but not limited to the turbine engine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), heat recovery system, fuel compressor, heater, and/or pump, post-combustion emissions control technology, and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system plus any integrated equipment that provides electricity or useful thermal output to the combustion turbine engine, heat recovery system or auxiliary equipment. Stationary means that the combustion turbine is not self-propelled or intended to be propelled while performing its function. It may, however, be mounted on a vehicle for portability. If a stationary combustion turbine burns any solid fuel directly it is considered a steam generating unit.

Steam generating unit means any furnace, boiler, or other device used for combusting fuel and producing steam (nuclear steam generators are not included) plus any integrated equipment that provides electricity or useful thermal output to the affected facility or auxiliary equipment.

Useful thermal output means the thermal energy made available for use in any heating application (*e.g.,* steam delivered to an industrial process for a heating application, including thermal cooling applications) that is not used for electric generation, mechanical output at the designated facility, to directly enhance the performance of the designated facility (*e.g.,* economizer output is not useful thermal output, but thermal energy used to reduce fuel moisture is considered useful thermal output), or to supply energy to a pollution control device at the designated facility. Useful thermal output for designated facility(s) with no condensate return (or other thermal energy input to the designated facility(s)) or where measuring the energy in the condensate (or other thermal energy input to the designated facility(s)) would not meaningfully impact the emission rate calculation is measured against the energy in the thermal output at SATP conditions. Designated facility(s) with meaningful energy in the condensate return (or other thermal energy input to the designated facility) must measure the energy in the condensate and subtract that energy relative to SATP conditions from the measured thermal output.

Variable frequency drive means an adjustable-speed drive used on induced draft fans and boiler feed pumps to control motor speed and torque by varying motor input frequency and voltage.

[FR Doc. 2019–13507 Filed 7–5–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 84 Monday,
No. 130 July 8, 2019

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Mallows Bay-Potomac River National Marine Sanctuary Designation; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 160907827–7832–02]

RIN 0648–BG02

Mallows Bay-Potomac River National Marine Sanctuary Designation

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) issues final regulations to implement the designation of the Mallows Bay-Potomac River National Marine Sanctuary (MPNMS or sanctuary). The area is 18 square miles of waters and submerged lands encompassing and surrounding the Mallows Bay area of the tidal Potomac River. The area is located entirely within Maryland state waters, adjacent to the Nanjemoy Peninsula of Charles County, Maryland. The sanctuary protects nationally-significant maritime cultural heritage resources, including the fragile, historic remains of more than 100 World War I (WWI)-era U.S. Emergency Fleet Corporation (USEFC) wooden steamships known as the ''Ghost Fleet,'' vessels related to the historic ship-breaking operations, other non-USEFC vessels of historic significance, and related maritime debris fields. The area also includes Native American sites, remains of historic fisheries operations, and Revolutionary and Civil War battlescapes. The significance of the area is recognized through its listing on the National Register of Historic Places (National Register Listing Number 15000173, April 24, 2015). NOAA, the State of Maryland, and Charles County, Maryland, will jointly manage MPNMS.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this document is published, unless the Governor of the State of Maryland certifies to the Secretary of Commerce during that same review period that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable term shall not take effect. The public can track the days of Congressional session at the following website: *https://www.congress.gov/days-in-session.* After the close of the forty-five days of continuous session of Congress, NOAA will publish a document announcing the effective date of the final regulations in the **Federal Register**.

ADDRESSES: Copies of the final environmental impact statement and final management plan (FEIS/FMP) described in this rule and the record of decision (ROD) are available upon request to: Mallows Bay-Potomac River National Marine Sanctuary, c/o NOAA Office of National Marine Sanctuaries, 1305 East West Hwy., 11th Floor, Silver Spring, MD 20910, Attention: Paul Orlando, Regional Coordinator. The FEIS/FMP is also available for viewing and download at *https://sanctuaries.noaa.gov/mallows-potomac/.*

FOR FURTHER INFORMATION CONTACT: Paul Orlando, Regional Coordinator, Office of National Marine Sanctuaries at 240–460–1978, *paul.orlando@noaa.gov,* or Mallows Bay-Potomac River National Marine Sanctuary, c/o NOAA Office of National Marine Sanctuaries, 1305 East West Hwy., 11th Floor, Silver Spring, MD 20910, Attention: Paul Orlando, Regional Coordinator.

SUPPLEMENTARY INFORMATION:

I. Background

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect the sanctuary system's biological and cultural resources, such as coral reefs, marine animals, historic shipwrecks, historic structures, and archaeological sites.

1. Mallows Bay-Potomac River National Marine Sanctuary

The Mallows Bay-Potomac River National Marine Sanctuary is an 18-square-mile area of the tidal Potomac River located 40 miles south of Washington, DC, off the Nanjemoy Peninsula of Charles County, Maryland. It is an area of national significance featuring unique historical, archaeological, cultural, ecological, and aesthetic resources and qualities, and offers opportunities for conservation, education, recreation, and research. Its maritime landscape is home to a diverse collection of historic shipwrecks that date back to the Civil War, and potentially to the American Revolutionary War, totaling more than 100 known vessels. Included among these vessels are the sunken remains of the largest ''Ghost Fleet'', wooden steamships built for the U.S. Emergency Fleet during World War I (WWI). The fleet was constructed at more than 40 shipyards in 17 states as part of a massive national wartime mobilization. The sanctuary's archaeological and cultural resources cover centuries of history dating back from the earliest American Indian presence in the region approximately 12,000 years ago to the Revolutionary, Civil and two World Wars, as well as successive regimes of Potomac fishing industries. The significance of this area is recognized through its listing on the National Register of Historic Places (National Register Listing Number 15000173, April 24, 2015).

The Maryland Department of Natural Resources (DNR), Maryland Historical Trust (MHT), Maryland Department of Tourism, and Charles County, MD, collaborated with community partners to implement conservation and compatible public access strategies in and around Mallows Bay, consistent with numerous planning and implementation documents. In 2010, DNR purchased a portion of land adjacent to Mallows Bay and made it available by a lease agreement to Charles County for the creation and management of Mallows Bay County Park, the main launch point for access to the historic shipwrecks. Pursuant to the National Historic Preservation Act (NHPA), the MHT has stewardship and oversight responsibility for the shipwrecks, along with hundreds of other historic non-shipwreck sites around the state. DNR manages the waterbody and associated ecosystem resources, including land use, resource conservation and extraction activities. The lands on either side of Mallows Bay County Park are held by the U.S. Department of Interior, Bureau of Land Management, and a private citizen.

2. Need for Action

The designation would allow NOAA to complement current state-led efforts to conserve and manage the nationally significant maritime cultural heritage resources in the sanctuary while enhancing public awareness and appreciation. The designation would

also facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses (including recreation and tourism), as directed by the NMSA. The threats to these resources are related to actions or conditions that result in the damage or loss of the historic resources. Over time, both intentional and unintentional direct damage has occurred from breaking, relocation of artifacts, defacing and physical alteration, burning, and removal of historic artifacts from the area. Additionally, indirect damage to the resources has occurred from the accumulation and entanglement of marine debris and from weather-related processes such as wind, flood, and ice events.

NOAA will concentrate on the protection, access and interpretation of the maritime cultural features of the area, including the Ghost Fleet, other vessels of historic significance, and related maritime infrastructure. The State of Maryland currently has a comprehensive set of management measures for the protection of the natural environment, including wildlife, fish, birds, water quality, and habitat. As such, NOAA's sanctuary regulations will focus only on the protection of the shipwrecks and associated maritime cultural heritage resources.

Although the Maryland Submerged Archaeological Historic Property Act (Md. Code Ann., State Fin. & Proc. sections 5A–333 *et seq.*) provides a basic level of protection for maritime cultural heritage resources in Mallows Bay and adjacent areas of the Potomac River, the sanctuary will allow NOAA's management under the NMSA to supplement and complement the existing authority and the current management framework in the area. The sanctuary will address ongoing threats to the maritime cultural heritage resources while providing opportunities for research, education, recreation, and tourism through coordinated and comprehensive management and conservation of the resources in collaboration with the State of Maryland and Charles County. NOAA will also carry out education, science, and interpretative programs that describe the relationship between the shipwreck structures and the natural ecosystem.

3. *Procedural History*

a. Sanctuary Nomination and Public Scoping

On September 16, 2014, pursuant to section 304 of the NMSA and the Sanctuary Nomination Process (SNP; 79 FR 33851), the former Governor of Maryland, Charles County, and a coalition of community groups submitted a nomination to NOAA seeking designation of Mallows Bay-Potomac River as a national marine sanctuary. The nomination cited conservation goals to protect and conserve the fragile, historic remains of the Nation's cultural heritage as well as the opportunities to expand public access, recreation, tourism, research, and education to the area. The nomination was endorsed by a diverse coalition of organizations and individuals at local, state, regional, and national levels including elected officials, businesses, Native American, environmental, recreation, conservation, fishing, tourism, museums, historical societies, and education groups. The nomination identified opportunities for NOAA to protect, study, interpret, and manage the area's unique resources, including by building on existing local, county, and State of Maryland efforts to manage the area for the protection of shipwrecks. NOAA's review of the nomination against the criteria and considerations of the SNP, including the requirement for broad-based community support indicated strong merit in proposing this area as a national marine sanctuary.

NOAA completed its review of the nomination and, on January 12, 2015, added the area to the inventory of nominations that are eligible for designation. All nominations submitted to NOAA can be found at: *https://www.nominate.noaa.gov/nominations/.*

On October 7, 2015, NOAA initiated the public scoping process with the publication of a Notice of Intent in the **Federal Register** (NOI; 80 FR 60634). The NOI solicited public input on the proposed designation and informing the public of the Agency's intentions to prepare a draft environmental impact statement (DEIS) evaluating alternatives related to the proposed designation of MPNMS under the NMSA. That announcement initiated a 90-day public comment period during which NOAA solicited additional input on the scale and scope of the proposed sanctuary, including ideas presented in the community nomination. The NOI also announced NOAA's intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA).

In November 2015, NOAA held two public meetings and provided additional opportunities for public comments by mail and through a web portal (*https://www.regulations.gov/docket?D=NOAA-NOS-2015-0111*). The comment period closed on January 15, 2016. All comments received, through any of these methods, are posted on the *www.regulations.gov* web portal. These public scoping comments were used by NOAA in preparing the proposed sanctuary regulations and draft environmental impact statement and draft management plan (DEIS/DMP) associated with the proposed sanctuary designation.

b. Designation Process

On January 9, 2017, NOAA published a document in the **Federal Register** announcing the proposed designation of approximately 52 square miles of waters of the tidal Potomac River as a national marine sanctuary (82 FR 2254). NOAA also provided public notice of the availability of the related DEIS/DMP (82 FR 2254; 82 FR 1733). All three documents (proposed rule, DEIS, and DMP) were prepared in close consultation with the State of Maryland and Charles County, Maryland. NOAA opened an 81-day public comment period on the proposed rule, DEIS, and DMP, which closed on March 31, 2017. During the comment period, NOAA also held two separate public meetings in La Plata, Maryland and in Arnold, Maryland.

All written comments are available at *https://www.regulations.gov/docket?D=NOAA-NOS-2016-0149.* NOAA's responses to public comments are included in Appendix C of the final environmental impact statement (FEIS) and final management plan (FMP), which was made available on May 31, 2019 (84 FR 25257), and in Section IV of this document.

II. Changes From Proposed to Final Regulations

Based on public comments received between January and March 2017, internal deliberations, interagency consultations, discussions with state-recognized Indian tribes, consultation with the Department of Navy (DoN) (as a cooperating agency in the preparation of the environmental impact statement), meetings with constituent groups, and evaluation of this input with the State of Maryland and Charles County, NOAA has made the following changes to the proposed rule. NOAA has also made conforming changes to the FEIS/FMP.

1. Sanctuary Boundary

In response to public comments and discussions with the State of Maryland, Charles County, Maryland, the DoN, NOAA decided to adopt Alternative B in the FEIS and designate 18 square miles of waters and submerged lands encompassing and surrounding the Mallows Bay area of the tidal Potomac River. The boundary begins at the mean high tide level on the Maryland side,

extends across the Potomac River to the Virginia-Maryland state boundary lines, and follows the boundary of the Mallows Bay-Widewater Historic and Archeological District in the National Register of Historic Places. The area also closely matches the boundary submitted to NOAA by the Governor of Maryland in the sanctuary nomination package. The area contains a concentration of 142 historic USEFC vessels, vessels related to historic ship-breaking activities, other non-USEFC vessels of historic significance, and related maritime debris fields. The area also includes Native American sites, remains of historic fisheries operations such as sturgeon and caviar industries, and Revolutionary and Civil War battlescapes.

2. Department of Defense Activities

NOAA, in consultation with the DoN, has established a framework for MPNMS and DoD to co-exist. In developing the proposed rules, NOAA did not anticipate that many, if any, current DoD activities would adversely impact sanctuary resources. However, following interagency consultation with DoD components (including DoN, the Marine Corps, and the U.S. Army), NOAA revised §§ 922.203(c) and 922.204 and the terms of designation set forth in appendix B to the MPNMS regulations at 15 CFR part 922, subpart S. In the final regulations, NOAA: (a) Clarifies the extent to which the sanctuary prohibitions may apply to DoD activities; (b) clarifies the requirement for DoD to engage in NMSA section 304(d) consultation; and (c) exempts DoD from the application of emergency regulations issued by NOAA pursuant to § 922.204.

III. Summary of Final Regulations for MPNMS

With this final rule, NOAA is implementing the following regulations for MPNMS.

1. Add New Subpart S to Existing National Marine Sanctuary Program Regulations

NOAA amends 15 CFR part 922 by adding a new subpart (subpart S) that contains site-specific regulations for MPNMS. This subpart includes the boundary, contains definitions of common terms used in the new subpart, provides a framework for joint management of the sanctuary, identifies prohibited activities and exceptions, and establishes procedures for certification of existing uses, permitting otherwise prohibited activities, and emergency regulations. Several conforming changes are also made to the national regulations as described in detail below.

NOAA is concurrently working on designating a separate new national marine sanctuary in Wisconsin's Lake Michigan waters as part of a separate rulemaking process (82 FR 2269). The regulations implementing the designation of Wisconsin—Lake Michigan National Marine Sanctuary would be published in subpart T.

2. Sanctuary Name

The name of the sanctuary is ''Mallows Bay-Potomac River National Marine Sanctuary'' and is abbreviated as MPNMS. The name is based on the nomination submitted by the community.

3. Sanctuary Boundary

The Mallows Bay-Potomac River National Marine Sanctuary consists of an area of approximately 18 square miles of waters of the State of Maryland and the submerged lands thereunder associated with the underwater cultural resources in the Potomac River. The western boundary of the sanctuary approximates the border between the Commonwealth of Virginia and the State of Maryland along the western side of the Potomac River and begins at Point 1 north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point. From this point the boundary continues to the north approximating the border between Virginia and Maryland cutting across the mouths of streams and creeks passing through the points in numerical order until it reaches Point 40 north of Tank Creek. From this point the sanctuary boundary continues east across the Potomac River in a straight line towards Point 41 until it intersects the Maryland shoreline just north of Sandy Point in Charles County, MD. From this intersection the sanctuary boundary then follows the Maryland shoreline south around Mallows Bay, Blue Banks, and Wades Bay cutting across the mouths of creeks and streams along the eastern shoreline of the Potomac River until it intersects the line formed between Point 42 and Point 43 just south of Smith Point. Finally, from this intersection the sanctuary boundary crosses the Potomac River to the west in a straight line until it reaches Point 43 north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point.

The detailed legal boundary description is included in § 922.200 and the coordinates are located in 15 CFR part 922, subpart S, appendix A. A map of the area is shown in the FEIS (Chapter 3.2), and can also be found at *https://sanctuaries.noaa.gov/mallows-potomac/.*

4. Definitions

NOAA narrowly defines ''sanctuary resources'' for MPNMS to include only the maritime cultural heritage resources of the sanctuary in accordance with the purpose of the designation. The definition does not include biological and ecological resources of the area already managed by the State of Maryland. Creating this site-specific definition requires NOAA to modify the national definition of ''sanctuary resource'' in the national regulations at § 922.3 to add an additional sentence that defines the site-specific definition for MPNMS at § 922.201(a). This is similar to the approach taken for other national marine sanctuaries that do not share the full national ''sanctuary resource'' definition, such as Thunder Bay National Marine Sanctuary.

NOAA also adds a definition in the MPNMS regulations at § 922.201(a) for sanctuary resource that uses the national definition for ''historical resources'' set forth in § 922.3 and expands the site-specific definition of sanctuary resource to specifically provide examples of the types of resources in MPNMS that fall within that definition. The national definition of ''historical resources'' at § 922.3 includes resources that possess historical, cultural, archaeological or paleontological significance, such as sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. These historical resources also include ''cultural resources,'' ''submerged cultural resources,'' and also include ''historical properties,'' as defined in the National Historic Preservation Act.

The MPNMS definition of sanctuary resources is then defined in § 922.201 to include historical resources as defined by § 922.3. This includes any sunken watercraft and any associated rigging, gear, fittings, trappings, and equipment. It also includes personal property of the officers, crew, and passengers, and any cargo, as well as any submerged or partially submerged prehistoric, historic, cultural remains, such as docks, piers, fishing-related remains (*e.g.* weirs, fish-traps) or other cultural heritage materials. For MPNMS, sanctuary resource also means any archaeological, historical, and cultural remains associated with or representative of historic or prehistoric American Indians and historic groups or peoples and their activities.

This final rule incorporates and adopts other common terms defined in the existing national regulations at § 922.3; some of those terms include: ''Cultural resources,'' which means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts; and ''National Marine Sanctuary'' or ''Sanctuary,'' which means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

Based on public comments and consultation with partners, the final rule adds a definition in the MPNMS regulations at § 922.201 providing that ''traditional fishing'' means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation or expansion, as identified in the relevant Final Environmental Impact Statement and Management Plan for this Sanctuary.

5. Joint Management of the Sanctuary

NOAA, the State of Maryland, and Charles County, Maryland, will jointly manage MPNMS. NOAA established the framework for joint management at § 922.202 and memorialized the operational details to coordinate sanctuary management in a Memorandum of Agreement (MOA). Any significant changes to the regulations or management plan would be jointly coordinated. The draft MOA is found in Appendix D in the FEIS.

6. Prohibited and Regulated Activities

NOAA will regulate three activities for MPNMS, found in § 922.203(a), and summarized below.

a. Damaging Sanctuary Resources

MPNMS regulations prohibit any person from conducting or causing to be conducted the moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource, except as an incidental result of traditional fishing. This sanctuary prohibition on possessing sanctuary resources does not apply retroactively to historical resources removed from the sanctuary prior to designation.

Maryland State regulations related to the limited removal of historical resources, which have been in effect since July 1, 1988, currently do not apply to these resources as limited removal is not allowed within the boundaries of National Register of Historic Places listed sites. Collection, excavation, or other comparable activities within the Mallows Bay-Widewater Archeological District, require permission through a permit from the state of Maryland. In the case of sanctuary resources that are covered under the Sunken Military Craft Act (SMCA; Pub. L. 108–375, Tit. XIV; 10 U.S.C. 113 note), NOAA and the DoN would cooperate on protecting those resources using the policy and procedures described in the 2015 Memorandum of Agreement (MOA). A copy of the MOA is available at: *www.gc.noaa.gov/moa-2014-navy-signed.pdf.*

Additionally, NOAA adopted the traditional fishing exemption to minimize or otherwise eliminate potentially adverse economic impacts of sanctuary designation experienced by the fishing industry and to address concerns raised by the Potomac River Fisheries Commission. The terms of designation (found in appendix B of subpart S) clarifies that fishing shall not be regulated as part of the Sanctuary management regime, but may be regulated by other Federal, State, Tribal and local authorities of competent jurisdiction. As an additional non-regulatory measure, NOAA, the State, and Charles County agreed to review, consider, and address measurable, negative impacts of sanctuary designation on fishing particularly during the 5- and 10-year periodic review conducted under the NMSA.

b. Damaging Sanctuary Signs and Infrastructure

NOAA prohibits damage to sanctuary signs, notices, placards, monuments, stakes, posts, buoys, or boundary markers. These materials are Federal property and part of the education and outreach programs in support of sanctuary management. This regulation prohibits damage from marking, defacing or altering these materials in any way.

c. Interfering With Investigations

NOAA prohibits interfering with sanctuary enforcement activities. This regulation will assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

d. Exemption for Emergencies and Law Enforcement

NOAA exempts from the three regulations activities that respond to emergencies that threaten lives, property or the environment, or are necessary for law enforcement purposes.

e. Department of Defense Activities

NOAA and DoD agree that all military activities will be carried out in a manner that avoids, to the maximum extent practicable, any adverse impacts on sanctuary resources and qualities. Based on information provided by DoD on its activities in the area, and analyzed by NOAA in its FEIS, the three prohibitions will not apply to existing military activities as described in the FEIS, or to the following activities:

(i) Low-level overflight of military aircraft operated by DoD;

(ii) The designation of new units of special use airspace;

(iii) The use or establishment of military flight training routes;

(iv) Air or ground access to existing or new electronic tracking communications sites associated with special use airspace or military flight training routes; or

(v) Activities to reduce or eliminate a threat to human life or property presented by unexploded ordnances or munitions.

New military activities that do not violate the three prohibitions are allowed in the sanctuary. Any new military activity that is likely to violate sanctuary prohibitions may become exempt from the prohibitions through consultation between the Director and DoD pursuant to section 304(d) of the NMSA. The term ''new military activity'' includes but is not limited to, any existing military activity that is modified in any way (including change in location, frequency, duration, or technology used) that is likely to destroy, cause the loss of, or injure a sanctuary resource, or is likely to destroy, cause the loss of, or injure a sanctuary resource in a manner or to an extent that was not considered in a previous consultation under section 304(d) of the NMSA.

7. Emergency Regulations

As part of this designation, NOAA will have the authority to issue emergency regulations. Emergency regulations are used in limited cases and under specific conditions when there is an imminent risk to sanctuary resources and a temporary prohibition on a specific activity would prevent the destruction or loss of those resources. Under the NMSA, NOAA only issues emergency regulations for a maximum of six months, and can only extend any single emergency regulation once. A full rulemaking process must be undertaken, including a public comment period, to consider making an emergency regulation permanent. NOAA modifies the national regulations at § 922.44 to

include MPNMS in the list of sanctuaries that have site-specific regulations related to emergency regulations, and adds detailed site-specific emergency regulations to the MPNMS regulations at § 922.204. DoD activities are not subject to emergency regulations.

8. General Permits, Certifications, Authorizations, and Special Use Permits

a. General Permits

NOAA has authority to issue permits to allow certain activities that would otherwise violate the prohibitions in MPNMS regulations. Similar to other national marine sanctuaries, NOAA considers these permits for the purposes of education, research, or management.

To include this permit authority for MPNMS, NOAA amends national regulations in part 922, subpart E, to add references to subpart S, as appropriate, and adds a new § 922.205 in subpart S titled ''Permit procedures and review criteria'' that would address site-specific permit procedures for MPNMS.

b. Certifications

NOAA adds language at § 922.206 describing the process by which NOAA may certify pre-existing authorizations or rights within MPNMS. Here, the term ''pre-existing authorizations or rights'' refers to any leases, permits, licenses, or rights of subsistence use or access in existence on the date of sanctuary designation (*see* 16 U.S.C. 1434(c); 15 CFR 922.47). Consistent with this, MPNMS regulations at § 922.206 states that certification is the process by which these pre-existing authorizations or rights that violate sanctuary prohibitions may be allowed to continue, and the sanctuary may regulate the exercise of the pre-existing authorizations or rights consistent with the purposes for which the sanctuary was designated. Applications for certifying pre-existing authorizations or rights must be received by NOAA within 180 days of the **Federal Register** notification announcing of effective date of the designation.

c. Authorizations

With this designation, NOAA also assumes authority to allow an otherwise prohibited activity to occur in MPNMS, if such activity is specifically authorized by any valid Federal, state, or local lease, permit, license, approval, or other authorization issued after sanctuary designation. ''Authorization authority'' is intended to streamline regulatory requirements by reducing the need for multiple permits and would apply to all prohibitions at § 922.203. As such, NOAA amends the regulatory text at § 922.49 to add reference to subpart S.

d. Special Use Permits

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries as established by section 310 of the NMSA. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary (1) to establish conditions of access to and use of any sanctuary resource; or (2) to promote public use and understanding of a sanctuary resource. The activities that qualify for a SUP are set forth in the **Federal Register** (78 FR 25957; May 3, 2013). Categories of SUPs may be changed or amended through public notice and comment. NOAA will not apply SUP authority to activities in existence at the time of MPNMS designation.

NOAA reviews SUP applications to ensure that a proposed activity is compatible with the purposes for which the sanctuary is designated and that the activities carried out under the SUP will be conducted in a manner that do not destroy, cause the loss of, or injure sanctuary resources. NOAA also requires SUP permittees to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit. The NMSA allows NOAA to assess and collect fees for the conduct of any activity under a SUP. The fees collected could be used to recover the administrative costs of issuing the permit, the cost of implementing the permit, monitoring costs associated with the conduct of the activity, and the fair market value of the use of sanctuary resources.

9. Other Conforming Amendments

The general regulations in part 922, subpart A, and part 922, subpart E, for regulations of general applicability would also have to be amended so that the regulations are accurate and up-to-date. The following 10 sections are updated to reflect the increased number of sanctuaries or to add subpart S to the list of sanctuaries:

- Section 922.1 Applicability of regulations
- Section 922.40 Purpose
- Section 922.41 Boundaries
- Section 922.42 Allowed activities
- Section 922.43 Prohibited or otherwise regulated activities
- Section 922.44 Emergency regulations
- Section 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights
- Section 922.48 National Marine Sanctuary permits—application procedures and issuance criteria
- Section 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity
- Section 922.50 Appeals of administrative action

NOAA intends to make additional system-wide regulation updates when NOAA finalizes elements of a national review of regulations that was proposed on January 28, 2013 (78 FR 5998). Of relevance to MPNMS, the final rule for the national review of regulations would consolidate general permit regulations and permitting procedures from site-specific subparts into the system-wide regulations. No substantive changes to MPNMS permit categories or permit requirements would be included as part of the national regulation review. NOAA will finalize elements of the national regulation review in a separate rulemaking action.

10. Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation include: The geographic area of the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that may be subject to regulation by the Secretary of Commerce to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. NOAA is adding the terms of designation as appendix B to the MPNMS regulations at 15 CFR part 922, subpart S.

IV. Response to Comments

When designating a national marine sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of an environmental impact statement (EIS), as provided by the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and that the EIS be made available to the public. In preparing the final EIS, the CEQ regulations further require that agencies respond to all ''substantive'' comments on a draft EIS (40 CFR 1503.4).

The MPNMS DMP, DEIS and proposed sanctuary regulations were released for public review on January 9, 2017 (82 FR 2256). The public comment period ended on March 31, 2017. During this period, NOAA received over 1,450 comments, including written comments,

oral comments, and group letters. Of those, 1120 comments were received through the eRulemaking Portal *www.regulations.gov.* NOAA also hosted two public hearings on March 7, 2017 in La Plata, MD, and March 9, 2017 in Arnold, MD. Over 170 people attended the meetings with 73 people providing oral public comment. Additionally, through the National Marine Sanctuary Foundation (NMSF), NOAA received two letters signed on behalf of multiple organizations; one was signed by 133 individuals in support of designation of NOAA's preferred alternative and the second was signed by 128 organizations in support of designation for MPNMS and a separate action relating to the proposed designation of Wisconsin—Lake Michigan National Marine Sanctuary.

The majority of comments expressed support for the proposed sanctuary, several expressed opposition, and a few did not take a position. Of those people who spoke at the public meetings, more than half expressed support, several were opposed, and a few expressed conditional support. In addition, of the nearly 1000 comments that specified a boundary alternative, relatively few favored Alternative A (*i.e.,* no action/no sanctuary), while most favored Alternative B (18 square miles, which closely matches with the Mallows Bay-Widewater Historical and Archeological District on the National Register of Historic Places), Alternative C (52 square miles of the tidal Potomac River, which includes all of the known WWI-era historic vessel remains) or Alternative D (100 square miles of the tidal Potomac River which may contain other maritime cultural heritage assets and potentially expands recreational use opportunities). The majority of comments supported Alternative D for purposes of public access and protection for any potential additional maritime cultural assets. Supporters of this alternative also cited its increased protection of natural resources, although natural resource management is not proposed or being implemented for this sanctuary. Several comments supported NOAA's draft preferred alternative (Alternative C) as did those who signed a letter of support through the NMSF. Of the comments that did not specify a boundary alternative, the majority supported a sanctuary designation. Through the NMSF, many organizations expressed support for MPNMS and the separate Wisconsin designation without reference to a specific alternative.

As a cooperating agency, the DoN provided NOAA with comments on behalf of four military installations adjacent to the proposed sanctuary boundary alternatives. DoN also submitted a public comment stating support for the proposed sanctuary designation and expressing a desire to work cooperatively with NOAA to ensure that the designation does not adversely impact military operations in the area.

Additional input on the proposal were provided to NOAA through consultation with Federal and state agencies as well as discussions with three state-recognized Tribes: Piscataway Conoy Confederacy and Sub-Tribes (MD), Piscataway Indian Nation (MD), and the Patawomeck Indian Tribe of Virginia (VA).

For the purposes of managing responses to public comments, NOAA grouped similar comments by theme. These themes align with the content of the proposed rule that identified the purposes and needs for a national marine sanctuary, and the draft management plan that identified the proposed non-regulatory programs and sanctuary operations. The themes are summarized below, followed by NOAA's response.

Comments on the Purposes and Need for the Sanctuary

Purpose and Need 1: Resource Protection for Maritime and Cultural Heritage Assets

1. Comment: The majority of comments NOAA received expressed support for the sanctuary designation because it will have a positive impact on cultural resource protection of known and potential shipwreck sites through increased public awareness, education, interpretation and related programs.

Response: NOAA agrees with these comments and, in partnership with the State of Maryland and Charles County, MD, is moving forward with the sanctuary designation process which cites protection and interpretation of nationally-significant maritime cultural heritage resources as one of two purposes and needs for the sanctuary.

2. Comment: NOAA received many comments highlighting that the WWI-era ship remains and related maritime assets are an important component of United States history and maritime cultural heritage.

Response: NOAA agrees with these comments. These vessels were built at more than 40 shipyards throughout the coastal United States and helped to transform the United States shipbuilding capacity. In addition, the demand for workers, materials and industry services provided significant economic and social benefit to local economies and communities.

3. Comment: NOAA received some comments stating that as the Nation commemorates the Centennial of United States' entry into WWI, sanctuary designation would be a fitting tribute to those citizens who served our country during that period.

Response: NOAA agrees that the sanctuary could help to interpret the stories of sacrifice and commitment of those who served during WWI, including our war veterans, the expansion of the U.S. Merchant Marines, and communities associated with more than 40 shipyards in the construction of the Ghost Fleet vessels. NOAA will continue to participate alongside other local, state and federal programs and non-profit organizations throughout the WWI Centennial Commemoration period and beyond.

4. Comment: NOAA received several comments expressing opposition to the proposed designation because commenters expressed mistrust with the Federal Government, argued the proposed sanctuary is not needed, and felt designation would not be a good use of taxpayer money.

Response: Through the NMSA, NOAA as a Federal agency carries out its mission through transparent public processes and community-based programs that involve extensive and continuous public engagement and input. This holds true for nominating and potentially designating new sanctuaries. The concept for this proposed sanctuary originated with a nomination from the Governor of Maryland to NOAA. That nomination also included the request for joint management with the State of Maryland and Charles County, MD. The designation process has included public scoping and public comment periods as well as numerous meetings with community organizations. Post-designation, NOAA and the joint managers of the sanctuary will continue their partnership and transparency with the community through sanctuary advisory councils, working groups, volunteer opportunities, and a diversity of partnerships.

The justification for the sanctuary is addressed in the final environmental impact statement. Specifically, Section 3.2 ''Description of Alternatives'' describes Alternative B in terms of the Mallows Bay-Widewater Historical Archeological District which codifies the national significance of the Ghost Fleet and related maritime assets and provides opportunity for Federal protection. Section 2.2 ''Purpose and Need for Action'' describes how the

NMSA would complement and supplement existing Federal and State authorities to enhance resource protection for maritime assets and facilitate public access and recreation through regulatory and non-regulatory actions.

In the final management plan for this sanctuary, NOAA describes sanctuary activities that could be completed at several funding levels (see FMP Appendix 3). As a federal agency, NOAA's budget is passed by Congress and is signed into law by the President. NOAA's budget includes an annual allocation for the management of all national marine sanctuaries under the NMSA. NOAA makes funding decisions for each sanctuary based on the Congressional appropriation to the Agency, Office of National Marine Sanctuaries priorities, and the particular needs of individual national marine sanctuaries. As a result, funding can vary from year to year, which may affect the level of activities completed in the management plan. NOAA also anticipates a varying level of in-kind contributions from joint managers from the State of Maryland and Charles County, MD, as well as other partners, will contribute to the overall sanctuary goals.

5. Comment: NOAA received a few comments that sanctuary designation is unnecessary because the historic resources are managed by the State of Maryland already and the area was recently added to the National Register of Historic Places (NRHP).

Response: NOAA disagrees that sanctuary designation is unnecessary. While the State of Maryland is the trustee and manager of the historic resources, there remain gaps in the State's authority to provide full protection, as defined in Section 2.4 of the FEIS. The listing of the Ghost Fleet on the National Register of Historic Places (NRHP) in 2015 deemed their value as nationally significant due to its historical, cultural or archaeological qualities and, therefore, eligible for additional Federal protection.

Section 2.4 of the FEIS defines the role of the NMSA to complement and supplement existing authorities. For example, the NHPA only applies to Federal undertakings and does not address actions taken by the public. As such, the NMSA would supplement existing state authorities by closing gaps related to the collection of historic artifacts, by strengthening the requirement for the public to report discovery of historic artifacts, by increasing enforcement capacity, and by increasing the penalty for violation of these prohibitions. Additionally, NOAA's non-regulatory programs (*e.g.,* education, public outreach, citizen science) make significant contributions to the ongoing and long-term management of historic resources and are important tools to help raise public awareness and deter impacts to the historic and maritime cultural heritage resources of the area.

6. Comment: NOAA received some comments expressing support for the proposed sanctuary designation because the sanctuary would help protect and interpret important Civil War heritage resources.

Response: NOAA agrees with these comments. In addition to protecting and interpreting WWI-era assets, the waters of the Potomac River potentially include historic assets from other eras, including the Civil War, which would also be protected. Additionally, the surrounding maritime landscape is associated with Civil War-era history, including the Underground Railroad.

NOAA expects that sanctuary research, education, and outreach efforts have potential to expand the understanding, protection and interpretation of these histories and resources.

7. Comment: NOAA received several comments that the sanctuary would serve as an important and permanent memorial to those citizens who have served and sacrificed their lives to defend our country, from the Revolutionary War through modern times.

Response: NOAA agrees that an opportunity may potentially exist. As these assets cannot reside in museums or other land-based venues, the resting place of the WWI-era Ghost Fleet and maritime assets from other war eras within sanctuary waters offer a unique opportunity to commemorate commitment and service. For example, NOAA and its partners have initiated preliminary dialog with the Maryland Veterans Museum at Patriot Park about the potential for the sanctuary's water-based perspective to complement the experience of visitors to their venue. NOAA intends to continue to work with a variety of organizations to promote and interpret histories and stories of personal commitment associated with the sanctuary.

8. Comment: NOAA received several comments that the shipwrecks are not nationally significant and that NOAA did not provide adequate justification for designation.

Response: NOAA disagrees with these comments. The WWI-era Ghost Fleet is a national asset that has been adequately documented and validated by nationally-recognized authorities. Specifically, in 2015, the Department of the Interior placed a section (called a ''district'') of the Potomac River containing the Ghost Fleet on the National Register of Historic Places. This district listing recognizes the area as ''nationally-significant'' and is consistent with the criteria described in the **Federal Register** notice for the Sanctuary Nomination Process to qualify the resources for consideration as a national marine sanctuary.

9. Comment: NOAA received some comments that the sanctuary should recognize and interpret the historical fisheries of the region as well as the generations of local watermen.

Response: NOAA agrees with these comments. While the WWI-era vessels and assets are the dominant maritime feature of the proposed sanctuary, NOAA recognizes that there are other significant cultural resources within and/or associated with the sanctuary (see Section 3.2 of FEIS p.52), including the history of fishing and the heritage of local watermen. The sanctuary will work with partners to conduct research and to provide education and outreach materials to help document and interpret these histories (see FMP Action Plan 5, Research, Science and Technology).

10. Comment: NOAA received a few comments that the sanctuary should include the history and heritage of the four DoD facilities that are within or nearby the proposed sanctuary alternatives.

Response: NOAA agrees with these comments. The DoD mission, facilities, and assets are critical to national security. DoD heritage is an integral part of the history and heritage of this region. The sanctuary management plan includes strategies to partner with these facilities to develop education, outreach and interpretative materials.

11. Comment: NOAA received several comments that the sanctuary should address Native American heritage.

Response: NOAA agrees with these comments. In 2014, the community who developed the original sanctuary nomination recognized Tribal culture as integral to the history and heritage of the Potomac River. The Piscataway Conoy Confederacy and Sub-Tribes (MD) served as a member of the nominating group and helped to guide the information content. There are two state-recognized tribes in Maryland (Piscataway Conoy Confederacy and Sub-Tribes and Piscataway Indian Nation) and one in Virginia (Patawomeck Indian Tribe of VA) who claim this area as their aboriginal territory. NOAA anticipates working alongside partners to expand

understanding and interpretation of the heritage of all local Native American cultures.

12. Comment: NOAA received a few comments that the sanctuary will provide an important opportunity to document African American culture and heritage in the area, including possible Underground Railroad sites as well as the contributions of African Americans to local shipbuilding and fisheries industries.

Response: NOAA agrees with these comments. Limited information exists on the direct role of African Americans in shipbuilding and related services during WWI and their role in subsequent ship breaking operations. Thus, the management plan identifies significant opportunity to research, document and interpret this history.

13. Comment: NOAA received a few comments questioning why the sanctuary boundary extends beyond the boundary of Mallows Bay Park since most of the ships are clustered in that area.

Response: While many of the known WWI-era vessel remains reside in an area adjacent to Mallows Bay Park, other known vessel remains are located near Widewater, VA, as well as other locations in the middle Potomac River. In addition, research indicates that other maritime and cultural assets from several time periods have yet to be discovered. As such, the proposed sanctuary boundary (Alternative B) encompasses these assets and is purposefully aligned with an area defined on the National Register of Historic Places. This entire area contains important cultural and maritime resources, including the remains of the WWI-era Ghost Fleet, vessels and assets associated with the three shipbreaking periods, vessels from other historical periods, and other cultural features. In response to public comments and consultations associated with the proposed sanctuary, NOAA, alongside partners from the State of Maryland and Charles County, MD, chose to adopt Alternative B, a management area that would include these potential historic sites and facilitate resource management as potential new sites are discovered. This would ensure that newly discovered sites are protected and managed at the time of discovery.

14. Comment: NOAA received a few comments that the sanctuary as proposed provides a good balance through its focus on maritime cultural heritage resources while continuing to leave the management of natural resources under existing state and local authorities.

Response: NOAA agrees with this comment. For the purposes of this designation, sanctuary resource protection and management is exclusive to the maritime and cultural assets of the area. NOAA has developed a Memorandum of Agreement (MOA) with the State of Maryland and Charles County, MD, that, in part, reiterates the authority and responsibility for natural resource management within the sanctuary remains with the State of Maryland and the Potomac River Fisheries Commission. In addition, the terms of designation (found in appendix B of subpart S) clarifies that fishing shall not be regulated as part of the Sanctuary management regime, but may be regulated by other Federal, State, Tribal and local authorities of competent jurisdiction.

15. Comment: NOAA received many comments regarding the probable existence of maritime artifacts throughout the areas identified in Alternatives C and D as rationale for expanding the sanctuary boundaries.

Response: NOAA agrees that significant maritime assets exist outside of sanctuary boundaries. For example, the remains of two WWI-era vessels, the remains of the steamship Wawaset, and the remains of a Civil War-era vessel are known to reside in the areas defined by Alternative C. As such, NOAA based Alternative C on the premise of including all of the known WWI-era vessels and other significant maritime assets in addition to those which research indicates have the potential to exist. Although NOAA is not aware of any documented vessels or maritime assets in Alternative D, NOAA agrees there is credible research to suggest they may exist and, therefore, the rationale for resource protection that was explored through Alternative D. NOAA believes there are substantial scientific and educational opportunities to explore and document additional assets and artifacts throughout the sanctuary and adjacent waters.

16. Comment: NOAA received one comment regarding NOAA's inability to enact management strategies that protect the maritime resources from ''sea level rise, marine debris, erosion and other impacts from the sea''.

Response: NOAA agrees that management strategies to protect maritime resources from forces of nature cannot be developed or implemented. These forces will continue to influence the condition of the maritime cultural heritage resources and the extent to which they are being reclaimed by nature. The sanctuary management plan proposes science and research activities that monitor and document changes to the maritime resources over time and, as practical, to better understand the potential impacts associated with these natural events.

NOAA also agrees that marine debris has potential to impact sanctuary resources. The management plan includes a number of non-regulatory strategies that raise public awareness and promote responsible use of the sanctuary resources as important methods for mitigating human impacts such as marine debris. Additionally, since 2014, NOAA and its partners have participated in an annual trash clean up at Mallows Bay Park hosted by the Alice Ferguson Foundation. Those events have attracted hundreds of community volunteers who have collected several tons of trash and marine debris in and around the historic and natural resources. Following designation, NOAA intends to expand partnerships with other programs in response to marine debris.

Purpose and Need 2: Public Access, Recreation and Heritage Tourism

17. Comment: NOAA received several comments that the Mallows Bay sanctuary nomination and designation processes have already increased public awareness of and visitation to the area, which has resulted in overcrowding at Mallows Bay Park and conflicts among users, and which threatens the protection of sanctuary resources.

Response: NOAA agrees that the designation process has increased awareness of Mallows Bay Park and adjacent maritime cultural heritage resources, but data are not available to interpret changes to visitation. As outlined in the proposed management plan, NOAA will work in cooperation with partners to understand visitor use, understand carrying capacity of the site and, if/as necessary, help mitigate overcrowding (see FMP Resource Protection Action Plan, Strategy RP–3) and reduce potential threats to sanctuary resources (see FMP Resource Protection Action Plan, Strategy RP–1 and RP–3). For example, proposed activities related to visitor information, signage, marketing, public outreach and water trails are expected to help disperse or separate visitors.

18. Comment: NOAA received many comments that NOAA should work with partners to help facilitate additional public access, enhance capacity at existing access sites, and enhance visitor services.

Response: NOAA agrees with this comment. Facilitating public access and recreational opportunity is one of two purposes and needs identified for the sanctuary. NOAA will continue to work

with partners in Maryland and Virginia to consider public use and demand and, as appropriate, to expand access and services that enhance visitor experiences.

19. Comment: NOAA received several comments that sanctuary designation is an opportunity to network recreational opportunities among multiple public parks and access points in MD and VA, and one comment providing specific recommendations for the types of amenities at these locations.

Response: NOAA agrees with this comment and recognizes the social and economic benefits associated with enhancing partnerships among these sites. Mallows Bay Park is one of several local, state and Federal parks in MD and VA along this stretch of the Potomac River. Additionally, these parks are adjacent to and provide public access to three national water trails in this portion of the river. The sanctuary management plan identifies activities to support recreational access, water trails and interpretation, as well as education and public outreach of the area on both sides of the Potomac River.

20. Comment: NOAA received a few comments that NOAA should protect the areas of importance but keep the river open and available to all.

Response: NOAA agrees with this comment. The purpose of the designation is to protect the nationally-significant maritime cultural heritage resources. In carrying out this purpose, NOAA has no plans to limit access to the Potomac River. Many of the action plans in the management plan encourage use of the river, including Resource Protection Strategy 3 (enhancing user access, developing trail maps, certification programs for local outfitters). Additionally, the Recreation and Tourism Action Plan (FMP Section 3) focuses on ways to increase sustainable use of the sanctuary and adjacent river, preparing and distributing outreach and education materials to visitors, and working with state and local governments to develop and/or enhance tourism infrastructure.

21. Comment: NOAA received one comment expressing concern about the safety of bicyclists on local roads and objections to using local taxes to fund the activities of visitors.

Response: Through the proposed designation, NOAA cannot manage or regulate local roads, vehicle traffic, or cyclist use of the roadways. Local land use planning, taxes and related infrastructure remain under the authority of County and State agencies. If or when changes to the use of local use of roadways is related to the sanctuary, any actions or amenities will be addressed by the County or State, as appropriate, and as a joint managers of the sanctuary.

22. Comment: NOAA received one comment expressing concern that NOAA would charge a fee for commercial and recreational uses of the Potomac River.

Response: Facilitating public access and recreational use of the Potomac River is one of the two purposes for establishing the sanctuary. The States and County may already charge fees for use of parks or recreational activities (*i.e.,* fishing licenses), but those fees are not associated with nor are the fees imposed by the sanctuary. Generally, NOAA does not charge fees for public access to national marine sanctuaries. However, pursuant to Section 310 of the NMSA, NOAA may issue special use permits (SUPs) to establish conditions of access and use of sanctuary resources, or to promote public use and understanding of a sanctuary resources. Special use permits are generally issued for a narrow category of concessionary or commercial activities. Those activities are set forth in the **Federal Register** (78 FR 25957; May 3, 2013 and 82 FR 42298; September 7, 2017), and include:

1. The placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands of any national marine sanctuary.
2. The placement and recovery of objects related to commercial filming.
3. The continued presence of commercial submarine cables on or within the submerged lands of any national marine sanctuary.
4. The disposal of cremated human remains within or into any national marine sanctuary.
5. Recreational diving near the USS Monitor.
6. Fireworks displays.
7. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries.
8. The continued presence of a pipeline transporting seawater to or from a desalination facility.

The NMSA allows NOAA to assess and collect fees for activities conducted under an SUP. The fees are collected in order to recover the administrative costs of issuing the permit, the cost of implementing the permit, monitoring costs associated with the conduct of the activity, and the fair market value of the use of sanctuary resources. NOAA will not apply the SUP to activities in place at the time of the MPNMS designation.

23. Comment: NOAA received one comment expressing concern that fossil hunting would be restricted.

Response: NOAA does not propose to restrict casual collection of fossils along the shoreline. NOAA will continue to work with partners to develop public education and outreach materials that interpret the resources of the area, including fossils, to help encourage respect and stewardship of any artifacts which may have unique cultural significance. Some commercial methods of collection may require permitting under the NMSA and through other authorities, such as the U.S, Army Corps of Engineers, if the activity is expected to cause significant bottom disturbance or damage to the historic resources.

24. Comment: NOAA received one comment that there should be an emphasis on encouraging recreational activity in the area, specifically related to recreational boating, and that the sanctuary must provide recreational access for boaters.

Response: Facilitating public access and recreational use of the Potomac River is one of the two purposes for establishing the sanctuary. NOAA encourages a variety of responsible recreational uses within the sanctuary and will continue to work with partners to explore opportunities to enhance services important to all users, including recreational boating.

25. Comment: NOAA received one comment asking NOAA to confirm that Alternatives C and D would not impact construction/maintenance of marinas and piers along the Prince William County, VA, shoreline or the operation of passenger ferry service and transport of commercial goods to ports on the Potomac River.

Response: Because NOAA's preferred alternative (Alternative B) does not include the Prince William County, VA, shoreline, the facilities referenced in the comment are not included in the sanctuary boundaries and thus will not be impacted by sanctuary regulations. In the case of any future construction projects that may have the potential to indirectly impact the sanctuary, NOAA would consult with other Federal, state and local agencies to evaluate potential impacts. The sanctuary regulations do not prohibit or otherwise limit vessel traffic on the Potomac River, and thus NOAA does not expect that this action would affect the operation of passenger ferry service or other commercial uses of the river. NOAA is committed to ensuring that the creation of the sanctuary supports businesses and organizations that use the river and surrounding marinas, ports and other waterfront facilities and recognizes that commercial and recreational uses of the Potomac River are important activities that support the nation's economy.

Impact on Sovereignty and Rights

26. *Comment:* NOAA received several comments concerned that sanctuary designation will result in the loss of State control of the Potomac River, and is a takeover of both management, regulation and permitting of the area by the Federal government.

Response: NOAA disagrees with this comment. The NMSA recognizes the sovereignty of the State of Maryland. As stated in the NMSA (16 U.S.C. 1431(b)(2)), one of the purposes and policies of sanctuary designation is ''to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.'' Similarly, section 1434 provides the Governor with authority to certify that the designation or terms thereof is unacceptable, and preclude the designation or terms thereof from taking effect in state waters.

NOAA, the State of Maryland, and Charles County, MD, will enter into a Memorandum of Agreement (MOA) that specifies the terms of joint management of the sanctuary and reiterates that the State does not relinquish sovereignty or management control over any State-owned bottom lands and resources within the sanctuary boundaries. This document clearly lays out how sanctuary designation will supplement and complement, not replace, existing authorities. The draft MOA can be found in Appendix D of the FEIS.

27. *Comment:* NOAA received a few comments that the Potomac River Fisheries Commission (PRFC) has sole authority to manage fisheries within the mainstem tidal reach of the Potomac River and that sanctuary designation and any associated regulations will infringe on the PRFC authority.

Response: NOAA disagrees that the sanctuary will infringe on PRFC authority. NOAA narrowly defines sanctuary resources as ''historical resources'', which includes ''any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime cultural heritage, and human activities and events.'' The definition does not including living resources, such as fish, marine mammals or seabirds. Instead, the proposed regulations seek only to protect the maritime and cultural resources of Mallows Bay-Potomac River.

In Article IV, Section 2, of the Terms of Designation (found in appendix B of part 922, subpart S), NOAA clarifies that ''NOAA will not exercise its authority under the NMSA to regulate fishing in the Sanctuary.'' NOAA has also added an exemption for traditional fishing in § 922.203(a), and ''traditional fishing'' is defined in § 922.201 as those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation or expansion, as identified in the relevant Final Environmental Impact Statement and Management Plan for this Sanctuary.

Furthermore, in Section VII of the Draft MOA (found in Appendix D of the FEIS/FMP), the parties intend to consider the potential impacts of sanctuary designation to commercial and recreational fishing activities during management plan review conducted under 304(e) of the NMSA. Specifically, within sixty days of the five- and ten-year anniversary date of the designation, the Governor of Maryland may submit findings demonstrating the manner and extent to which the designation of the sanctuary is having measurable negative impacts on the State's commercial and/or recreational fishing industry, and provide NOAA with an opportunity to address the concerns.

Additionally and pursuant to the NMSA, any future changes to the activities subject to regulation would require public notice, a rulemaking process, and concurrence from the State of Maryland. As such, the authority and responsibility for natural resource management, including commercial and recreational fishing, remain with PRFC and MD Department of Natural Resources (DNR). In March 2017, Attorneys General from both Maryland and Virginia rendered opinions to PRFC and MD DNR which confirmed that the authorities of PRFC and DNR for natural resource management would not be impacted by sanctuary designation (See FEIS Appendix E).

28. *Comment:* NOAA received a few comments concerned that sanctuary designation will infringe upon the rights of local tribes.

Response: NOAA disagrees with this comment. Sanctuary designation and management will not infringe on Tribal rights. NOAA anticipates working alongside partners to expand understanding and interpretation of the heritage of all local Native American cultures. There are two state-recognized tribes in Maryland (Piscataway Conoy Confederacy and Sub-Tribes and Piscataway Indian Nation) and one in Virginia (Patawomeck Indian Tribe of VA) who claim this area as their aboriginal territory. Consistent with section 106 of the National Historic Preservation Act, NOAA invited the three state-recognized tribes to be consulting parties in the designation process. Interaction with local Tribes has been on-going.

In 2014, the community who developed the original sanctuary nomination recognized Tribal culture as integral to the history and heritage of the Potomac River. The Piscataway Conoy Confederacy and Sub-Tribes (MD) served as a member of the nominating group and helped to guide the information content. Since then, members of the Piscataway Conoy Confederacy and Sub-Tribes participated in local community events related to Mallows Bay and, on March 7 and March 9, 2017, offered verbal comments related to the proposed sanctuary. One member questioned the historic value of the ships and expressed concern about increased taxes, while the Tribe's Chairman expressed support for the sanctuary and partnerships that share a common goal to protect the resources and ancestry of the Potomac River. On March 22, 2017, also as part of the public comment period, the Patawomeck Indian Tribe of VA submitted a written comment expressing concern for Tribal sovereignty and Federal involvement that could affect livelihoods.

On March 2, 2017, NOAA sent letters to two Maryland Tribes—the Piscataway Conoy Confederacy and Sub-Tribes and Piscataway Indian Nation. The Piscataway Conoy Confederacy and Sub-Tribes provided oral comments during the public meetings on March 7 and March 9 as described above. On November 3, 2017, NOAA sent follow up emails to these same Tribes inviting them to discuss the proposed sanctuary and any concerns related to the Tribes. NOAA did not receive a reply from either.

On October 16, 2017, and November 20, 2017, NOAA sent invitations for consultation to the Patawomeck Indian Tribe of VA. NOAA did not receive a response. On November 29, 2017, NOAA phoned Chief John Lightner. During that conversation, Chief Lightner offered no present-day concerns relative to the proposed sanctuary, despite the initial concerns expressed during the public comment period in March 2017. Moreover, Chief Lightner expressed interest in learning more about opportunities to engage directly with the sanctuary on topics related to interpreting the heritage of the Patawomeck Tribe of VA.

29. *Comment:* NOAA received one comment that the sanctuary would cause property owners along the shoreline to lose their properties.

Response: As described in Section 3.2 of the FEIS, sanctuary resources are specific to the maritime and cultural resources within Maryland waters. The sanctuary boundary does not include land area, nor does it include private property. Following sanctuary designation, authority for local land use planning remains with local jurisdictions (*e.g.,* Charles County, Maryland and VA counties). NOAA has been and will continue to work closely with state, county, and local authorities to understand land-based actions with the potential to negatively affect sanctuary resources.

Comments Related to Indirect Benefits

30. *Comment:* NOAA received many comments that sanctuary designation will be important to protect existing populations and habitats for striped bass and sturgeon, and will improve water quality for recreational and commercial fishing.

Response: The authority and responsibility for natural resource management, including commercial and recreational fishing, remains with the State of Maryland and the Potomac River Fisheries Commission. The management of the sanctuary is focused on protections of maritime heritage resources. As such, to the extent that fish or other species rely on the maritime heritage resources as habitat, the sanctuary may have beneficial effects. The sanctuary management plan identifies opportunities for science and monitoring of maritime heritage resources, including their relationship with the local ecosystem. NOAA's Office of National Marine Sanctuaries consulted with NOAA Fisheries pursuant to ESA section 7 for sturgeon and pursuant to the EFH provisions of the MSA for summer flounder and bluefish. In both consultations, NOAA found that sanctuary designation would not have an adverse effect.

31. *Comment:* NOAA received many comments that the sub-estuaries represented by Alternative D are part of a connected ecosystem. As such, a sanctuary that includes this area could have additional benefit for species, habitat and water quality

Response: NOAA's consideration of Alternative D was related directly to the protection and management of maritime cultural heritage resources and enhancing recreational access and interpretation related to these resources. As such, NOAA did not consider this area from the perspective of ecosystem connectivity. Following sanctuary designation, natural resource management will remain under the jurisdiction of other existing State and Federal authorities.

32. *Comment:* NOAA received many comments that the proposed national marine sanctuary is an important component of the Chesapeake Bay and related programs

Response: NOAA agrees with this comment. The Chesapeake Bay Program is a regional partnership that leads and directs Chesapeake Bay restoration and protection through partnerships with federal and state agencies, local governments, nonprofit organizations and academic institutions. NOAA is represented and actively engages in partnerships throughout the Chesapeake Bay and in the Potomac River. The sanctuary presents additional opportunities to expand local and regional partnerships for public engagement, education, science and outdoor experiences.

33. *Comment:* NOAA received several comments that the proposed national marine sanctuary is an important component of the Potomac River and the Chesapeake Bay.

Response: NOAA agrees with this comment. The Potomac River, which is part of the Chesapeake Bay watershed, is an important natural resource in the region. The cultural resources within the sanctuary are an important watershed component that reflects the human history of the region. Through the sanctuary management plan, NOAA intends to further explore and interpret the cultural and historic aspects of the greater Potomac River watershed and its relationship to the greater Chesapeake region.

34. *Comment:* NOAA received one comment stating that ''Marine sanctuaries have been demonstrated to have huge net-positive benefits for economic growth. I think designation of Mallows Bay as a marine sanctuary would be a critical advancement for the region. I think this is so important to the long-term future of this region, that if I were asked, I would support market-based compensation for individuals that are financially harmed by the designation. This would be an important step in the restoration and strengthening of our bay.''

Response: NOAA agrees that national marine sanctuaries have potential to provide net positive economic benefit to communities, as described in the FEIS, Sections 5.3.2 and 5.3.4. Increased awareness of the area and its maritime resources has potential to increase heritage and recreational tourism and drive demand for enhancing visitor services. NOAA's evaluation does not include consideration of market-based compensation.

Concern for Future Expansion of NOAA Authorities

35. *Comment:* NOAA received a few comments expressing concern that in 5 years when NOAA is required to revise the management plan, NOAA will change the rules, expand the boundaries, and put in stricter regulations.

Response: Section 304(e) of the NMSA requires NOAA to evaluate a national marine sanctuary's management plan every five years. However, NOAA is not required to revise the management plan and/or the regulations during the management plan review process. Should any changes to the sanctuary's management approach be required, they would be made only after the agency has engaged in a robust public process.

Additionally, any proposed changes to a national marine sanctuary boundary and its regulations are further subject to section 304(a)(4) of the NMSA, which identifies the sanctuary's ''terms of designation'' (*i.e.,* its geographic boundaries, the characteristics that make it significant, and the broad types of activities that could be subject to regulation). These terms of designation may be modified only by the same procedures used for the original designation, meaning they must include public notice requirements. This provision also allows the Governor of any respective state within the sanctuary's boundaries to review any changes to the terms of designation, and to make a determination as to whether they are acceptable. Any term of designation the Governor determines as unacceptable shall not take effect in the state waters of the sanctuary.

In the case when a regulatory change does not require changes to a sanctuary's terms of designation, NOAA would have to follow the procedures of the Administrative Procedure Act (5 U.S.C. 553), which requires adequate public notice and opportunity for public comment on any proposed new regulations. The State of Maryland and Charles County, as the sanctuary joint-managers, would be involved in all considerations regarding any proposed changes to the sanctuary's terms of designation and regulations.

36. *Comment:* NOAA received a few comments expressing concern that, because NOAA has the authority to regulate fishing, once the sanctuary is designated NOAA is likely to begin regulating fishing within this sanctuary.

Response: NOAA's purpose in designating this national marine sanctuary is to protect maritime cultural heritage assets located in the Potomac River. While NOAA Office of National Marine Sanctuaries has authority to regulate fishing activities pursuant to the NMSA, NOAA has not exercised that authority for this sanctuary. The sanctuary regulations for MPNMS only apply to historical resources. Additionally, the terms of designation for MPNMS do not identify fishing as one the activities subject to regulations. Moreover, since the waters of the sanctuary are located entirely within the jurisdiction of the State of Maryland, the PRFC (which includes commissioners from Maryland and Virginia) and the State of Maryland will retain the sole authority to publish and enforce rules, regulations and laws dealing with all fishing matters in the area. In the Article IV, Section 2 of the Terms of Designation (found in appendix B of part 922, subpart S), NOAA clarifies that ''NOAA will not exercise its authority under the NMSA to regulate fishing in the Sanctuary.''

37. *Comment:* NOAA received a few comments that designation could impact hunting and the permitting process. In addition, there is no mention of hunting as a recreational activity; current hunting regulations, licenses, and permitting should remain as is.

Response: NOAA's purpose in designating this national marine sanctuary is to protect maritime cultural heritage assets located in the Potomac River. The FEIS has been updated to include data on hunting activities in the area. NOAA's analysis of the resources has not found any threats from or impacts to these resources from hunting. Thus, the terms of designation does not identify hunting as one of the activities subject to regulation, so NOAA cannot impose restrictions on hunting unless new terms of designation are issued. All licensing and permitting for hunting will remain under the jurisdiction of the Maryland DNR.

Comments Related to the Draft Management Plan

38. *Comment:* NOAA received many comments that the sanctuary would enhance student education (K–12 and higher education), particularly through increased opportunity for field-based programs.

Response: NOAA agrees with this comment. The sanctuary offers students a unique experience in multi-disciplinary education. This area has recently become a magnet for educational field experiences at all levels, including several graduate studies from outside the local area. Additionally, through funding from NOAA, stewardship activities and outdoor educational opportunities have been expanded at two schools in Charles County, MD. The sanctuary will enable additional educational opportunities and partnerships, including those aimed at understanding and appreciation of both ecological characteristics and historic archaeological resources within the area. The site's proximity to Washington, DC, and several colleges and universities adds to the opportunities for learning and research at the highest level, often in conjunction with state and federal agencies, and private educational institutions.

39. *Comment:* NOAA received comments that the sanctuary will be an important location for research, science and monitoring of historical resources as well as their interaction with the natural environment.

Response: NOAA agrees with this comment. The sanctuary is an excellent site to act as a living laboratory to understand changes to natural conditions, shipwrecks, and the interaction between them. Many opportunities for scientific, archaeological and environmental research exist through partnerships with non-profit maritime organizations, and universities and colleges with maritime archaeology programs being invited to work with NOAA and the State to undertake research and to encourage students to seek thesis and dissertation topics at Mallows Bay. The College of Southern Maryland in particular has expressed interest in integrating various components of its current and planned curriculum, such as studies in robotics and remote sensing technology, to partner with the archaeological research of submerged sites in the transect.

40. *Comment:* NOAA received many comments requesting that NOAA should consider a visitor center to support public awareness, education, and interpretation. In addition, the comments suggest NOAA should consider the location of the visitor center to support tourism and possibly to enhance the local economy through visitation.

Response: NOAA agrees that connecting to the public through educational and interpretive programs, exhibits and interactive experiences, including visitor centers, is an important component of all national marine sanctuaries. Following sanctuary designation, NOAA will work with state and local partners to evaluate the types and locations of educational and interpretive programs and/or infrastructure (*e.g.,* signs and exhibits) needed to support sanctuary management. Visitation and potential economic benefit are among numerous other considerations regarding the potential for a visitor center. If a visitor center is determined to be appropriate and feasible, NOAA will work in partnership the county, state and/or other local authorities with jurisdiction for land use planning and funding options.

41. *Comment:* NOAA received some comments that sanctuary designation would increase tourism, which would benefit the local economy. Sanctuary designation would help to create or support jobs and small business opportunities especially those associated with visitor services.

Response: NOAA agrees that the designation has potential to increase public interest and visitation to the area as described in the FEIS, Sections 5.3.2 and 5.3.4. No recent economic studies exist to document visitation, although the need for one is identified in the sanctuary management plan. Charles County initiated a method to track visitation to Mallows Bay Park in Spring 2017. However, public access also originates from other nearby sites. As such, the potential for visitation and demand for services is not known. Should it occur, this demand may aid the local economies of the surrounding area, particularly for small businesses that cater to nature-based tourism, heritage tourism, recreational fishing, wildlife viewing, kayaking and boating.

42. *Comment:* NOAA received several comments that sanctuary designation will have negative economic impacts to local watermen.

Response: NOAA disagrees with this comment. The principal purpose of the sanctuary is to protect, study, interpret and manage the extensive archaeological and historical resources of the area. Because the authorities for managing fishery resources will remain with the PRFC and MD DNR, sanctuary designation will not regulate, alter or negatively impact commercial or recreational fishing.

43. *Comment:* NOAA received a few comments expressing concern that placing any new restrictions on the Potomac River will adversely impact the ability of DoD to carry out critical mission training and operations. In addition, MPNMS tourism will result in increased boat traffic on the river, which would interfere with military training and operations.

Response: NOAA disagrees with this comment. In September 2016, the Department of Navy (DoN) signed on as a cooperating agency to participate in

the development of the sanctuary designation documents, including the sanctuary regulations, management plan, and environmental impact statement. DoN coordinated interactions and information exchange between NOAA, Marine Corps Base Quantico, Naval Support Facility Indian Head, Naval Support Facility Dahlgren, and Blossom Point Research Facility (collectively referred to as Department of Defense (DoD)). NOAA, in consultation with the DoN, has established a framework for MPNMS and DoD to co-exist. In developing the proposed rule, NOAA did not anticipate that many, if any, current DoD activities would adversely impact sanctuary resources. However, following interagency consultation with DoD components (including DoN, the Marine Corps, and the U.S. Army), NOAA revised §§ 922.203(c) and 922.204 and the terms of designation set forth in appendix B to the MPNMS regulations at 15 CFR part 922, subpart S. In the final regulations, NOAA: (a) Clarifies the extent to which the sanctuary prohibitions may apply to DoD activities; (b) clarifies the requirement for DoD to engage in NMSA section 304(d) consultation; and (c) exempts DoD from the application of emergency regulations issued by NOAA pursuant to § 922.204. Additionally, the discussions with DoD identified benefits that would be provided to DoD through sanctuary education, public outreach, interpretation and management.

44. *Comment:* NOAA received a few comments expressing concern that sanctuary designation will have negative impacts to local businesses and will restrict local development opportunities.

Response: As is the case at other national marine sanctuaries around the country, NOAA believes that the sanctuary will have a positive impact on local businesses and the economies of the surrounding area. No recent economic studies exist to document visitation, although the need for such studies is identified in the sanctuary management plan. Charles County initiated a method to track visitation to Mallows Bay Park in Spring 2017, however, public access also originates from other nearby sites. As such, the potential for visitation and demand for services is not known. Should it occur, this demand may aid the local economies of the surrounding area particularly for small businesses that cater to nature-based tourism, heritage tourism, recreational fishing, wildlife viewing, kayaking and boating.

45. *Comment:* NOAA received a few comments that water quality conditions in the Potomac River may pose a risk to public health.

Response: NOAA does not define water quality as a sanctuary resource and, as such, will not manage water quality conditions nor contributing factors. However, NOAA is interested in water quality as it may affect the wrecks. Therefore, NOAA may monitor water quality through deployment of monitoring buoys or other methods, and may participate in relevant community activities such as trash clean-ups.

46. Comment: NOAA received one comment concerned that special conservation areas that are identified on aeronautical charts would restrict aviation primarily through altitude restrictions and landing requirements.

Response: NOAA's purpose in designating this national marine sanctuary is to protect maritime cultural heritage assets located in the Potomac River. NOAA's analysis of the resources has not found any threats from or impacts to these resources from aircraft. Thus, air space/altitude of aircraft is not identified in the terms of designation as an activity that is subject to regulation. NOAA is precluded from regulating airspace unless change in the terms of designation is issued.

47. Comment: NOAA received one comment expressing concern that NOAA would have insufficient capacity for day-to-day enforcement of the rules of the sanctuary.

Response: Upon designation, NOAA will continue to work with agency co-managers and partners to evaluate the need for enforcement specific to the maritime and cultural assets defined as sanctuary resources. Enforcement of natural resources and other activities that are not related to sanctuary resources will remain with the existing authorities. NOAA often employs ''interpretative'' enforcement, through education, public outreach, docents and similar non-regulatory means, to help inform users and encourage stewardship of the resources.

48. Comment: NOAA received a few comments related to the cost of designating a national marine sanctuary, including a question related to the source of funding for the sanctuary, a concern that Federal funds are insufficient for sanctuary enforcement and another asking about funding sources for a visitor center.

Response: As a federal agency, NOAA's budget is passed by Congress and signed into law by the President. NOAA's budget includes an annual allocation for the management of all national marine sanctuaries. The NMSA directs NOAA to protect these nationally significant ecological and historic resources. NOAA makes funding decisions for each sanctuary based on the annual funding level, program priorities, and site needs. As a result, site funding can vary from year to year which may affect the level of activities completed in the management plan each year. As part of the management plan for this sanctuary, NOAA includes a table that described the sanctuary activities that could be completed at several funding levels. NOAA also anticipates a varying level of in-kind contributions from co-managers and partners to help support sanctuary goals.

49. Comment: NOAA received one comment from a non-governmental organization requesting opportunity to review the Memorandum of Agreement (MOA) for joint management of the sanctuary between NOAA, the State of Maryland and Charles County, MD.

Response: NOAA, the State of Maryland, and Charles County, MD, have agreed to enter into a formal agreement, referred to as a MOA. This agreement establishes the framework for joint management and operation of Mallows Bay-Potomac River National Marine Sanctuary, and will be based on language contained in the draft MOA available in Appendix D of the FEIS/FMP.

50. Comment: NOAA received a few comments from organizations requesting to have seats on the sanctuary advisory council (SAC).

Response: NOAA appreciates the interest from members of the public who want to participate with the SAC. Following designation and pursuant to NMSA section 315, NOAA will establish and manage a SAC to advise and make recommendations regarding the management of the sanctuary. The SAC may be composed of up to fifteen (15) members and, per NMSA section 315, may include: (a) Persons employed by Federal and/or state agencies with expertise in management of sanctuary resources and (b) representatives of local user groups (such local user groups may include, but are not limited to, local fishing interests), conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use and management of sanctuary resources. In its establishment, NOAA will strive to achieve a balanced advisory council composition that best represents the primary sanctuary users and interests. In determining the composition of the advisory council, NOAA may consult with the State of Maryland and/or Charles County.

Comment on the Proposed Regulations

51. Comment: NOAA received one comment expressing concern about giving the Sanctuary Superintendent the power to issue emergency regulations.

Response: As part of the designation, NOAA will have the authority to issue emergency regulations. As described in the proposed rule (82 FR 2254) and in this final rule, emergency regulations are used in limited cases and under specific conditions when there is an imminent risk to sanctuary resources and a temporary prohibition would prevent the destruction or loss of those resources. Under the regulations at 15 CFR 922.204, NOAA only issues emergency regulations that address an imminent risk for a fixed amount of time with a maximum of 6 months that can only be extended a single time. The emergency regulation also cannot take effect without the approval of the Governor of Maryland, or his/her designee. Moreover, a full rulemaking process must be undertaken, including a public comment period, to consider making an emergency regulation permanent.

Comments on the NEPA Process

52. Comment: NOAA received two comments requesting NOAA to extend the public comment period beyond March 31, 2017.

Response: NOAA considered these comments during the comment period and declined to extend the comment period. NOAA fully complied with the requirements of the NMSA (16 U.S.C. 1434(a)(1)) and Administrative Procedures Act (5 U.S.C. 553) to provide adequate opportunity for public comment. From January 9 to March 31, 2017, NOAA held an 81-day public comment period, which exceeds the 30-day comment period requirement under APA, to allow the public time to review the proposal and provide comments. NOAA also hosted two public meetings to discuss the proposal and gather comments. In addition to posting a **Federal Register** notice, NOAA broadcasted the proposed action through extensive national and local media and social media outlets and targeted communications to Congressional members and staff as well as stakeholders including local/regional conservation NGOs, local tourism agencies and other business interests, local/regional elected officials, university and academic researchers, recreational divers, commercial and recreational fishing interests, and federal/state/local partners.

53. Comment: NOAA received one comment requesting that NOAA coordinate actions under the Endangered Species Act related to the Atlantic sturgeon critical habitat prior to sanctuary designation.

Response: In compliance with requirements under NEPA and the Endangered Species Act (ESA; Section 7(c)), ONMS requested consultation with NOAA's National Marine Fisheries Service (NMFS) to assess whether sanctuary designation might have impacts to Atlantic sturgeon. NMFS determined that due to the lack of identifiable stressors, sanctuary designation would have no effect on any ESA-listed species or critical habitat; see section 6.1.1 of the FEIS for discussion.

54. Comment: NOAA received a few comments that NOAA needs to conduct additional consultations.

Response: NOAA conducted all required consultations during the preparation of the FEIS. Chapter 6 of the FEIS describes the required Federal, state, and other consultations with state-recognized tribes that NOAA undertook under the requirements of the NMSA, National Historic Preservation Act, Endangered Species Act, Magnuson-Stevens Fishery Management and Conservation Act, Coastal Zone Management Act, and relevant Executive Orders, and the results of those actions.

V. Classification

National Marine Sanctuaries Act

NOAA has determined that the designation of the Mallows Bay-Potomac River National Marine Sanctuary will not have a negative impact on the National Marine Sanctuary System and that sufficient resources exist to effectively implement sanctuary management plans. NOAA also determined that the requirement to complete site characterizations has been met. The final findings for NMSA section 304(f) are published on the ONMS web page for the Mallows Bay-Potomac River designation at *https://sanctuaries.noaa.gov/mallows-potomac/.*

National Environmental Policy Act

NOAA has prepared a final environmental impact statement to evaluate the environmental effects of the rulemaking and alternatives as required by NEPA (42 U.S.C. 4321 *et seq.*) and the NMSA. The Notice of Availability (84 FR 25257) is available at *https://sanctuaries.noaa.gov/mallows-potomac/.* NOAA has also prepared a Record of Decision (ROD). Copies of the ROD and FEIS are available at the address and website listed in the **ADDRESSES** section of this rule.

Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires federal agencies to consult with a state's coastal program on potential federal regulations having an effect on state waters. Because MPNMS encompasses a portion of the Maryland state waters and is adjacent to the Commonwealth of Virginia lands and waters, NOAA provided a copy of the proposed rule and supporting documents to the Maryland Department of the Environment, (MDE) Coastal Zone Management (CZM) Program and Virginia Coastal Zone Management Program within the Department of Environmental Quality (DEQ) for evaluation of Federal consistency under the CZMA. On April 19, 2018, the MDE concurred with NOAA's consistency determination that the proposed action was consistent with the enforceable policies of the Maryland CZM program. That same day, DEQ sent a separate concurrence letter to NOAA concluding that the project is consistent to the maximum extent practicable with the enforceable policies of the Virginia CZM program, provided that all applicable permits and approvals are obtained, and the project is operated in accordance with all applicable federal, state, and local laws and regulations. No federal or state permits are required for sanctuary designation, and NOAA has consulted and obtained all other required approvals. MPNMS will be operated in accordance with applicable laws and regulations.

Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. These sanctuary regulations are intended only to supplement and complement existing state and local laws under the NMSA.

Executive Order 13795: Implementing an America-First Offshore Energy Strategy

On April 28, 2017, Executive Order 13795—Implementing an America-First Offshore Energy Strategy was signed by the President. Section 4(a) of E.O. 13795 requires the Secretary of Commerce (acting through NOAA) to receive from the Department of the Interior (DOI) a

full accounting of the energy or mineral resource potential of any area proposed for sanctuary designation or expansion, including information on the potential impact the proposed designation or expansion will have on the development of those resources.

On December 22, 2016, NOAA sent DOI a letter providing notice of the NOAA's proposal to designate two new national marine sanctuaries in Wisconsin and Maryland pursuant to the NMSA (16 U.S.C. 1431 *et seq.*). Although NOAA believed that neither of these proposed sanctuaries were within DOI's leasing authorities pursuant to the Outer Continental Shelf Lands Act, NOAA requested in a subsequent letter on April 11, 2018 that DOI evaluate these designations pursuant to E.O. 13795 (4)(b). On May 7, 2018, DOI responded to NOAA's letter confirming that lands underlying the proposed sanctuary are state lands and thus are not managed by DOI and that DOI has no plans for energy or mineral resource development in the area.

National Historic Preservation Act

The National Historic Preservation Act (NHPA; 16 U.S.C. 470 *et seq.*) is intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and State Historic Preservation Offices. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP (36 CFR parts 800 through 812). In fulfilling its responsibilities under the NHPA, NOAA consulted with the Maryland State Historic Preservation Officer (SHPO), and completed the identification of historic properties and the assessment of the effects of the undertaking on such properties in scheduled consultations with those identified parties and the SHPO. Pursuant to 36 CFR 800.16(l)(1), historic properties includes any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. NOAA does not believe this action will cause any adverse impacts to historic or cultural resources as a result of any of the alternatives presented in the FEIS. In March 2017, ONMS sent a letter to the SHPO requesting concurrence on that finding. In a June 19, 2017, letter to ONMS, the SHPO concurred that sanctuary designation would have no adverse effect on historic properties.

NOAA invited state recognized tribes to be consulting parties under Section 106 of the NHPA (54 U.S.C. 306108), pursuant to 36 CFR 800.2. On January 3, 2017, NOAA sent a letter to the Piscataway Conoy Confederacy and Sub-Tribes and the Piscataway Indian Nation, both located in Maryland, inviting them to consult on the proposed designation. NOAA contacted each of the tribes again on March 2, 2017, and on November 3, 2017. Although NOAA received no written response to these communications, members of the Piscataway Conoy Confederacy and Sub-Tribes participated in local community events related to the proposed sanctuary and on March 7 and March 9, 2017, offered verbal comments related to the proposed sanctuary. On March 22, 2017, the secretary of the Patawomeck Tribe of Virginia submitted written comments on the proposed designation. On October 16, and November 20, 2017, ONMS contacted the Patawomeck Tribe of Virginia and invited them to discuss their relationship to the proposed sanctuary. During a phone conversation on November 29, 2017, Chief John Lightner offered no present-day concerns relative to the proposed sanctuary and expressed interests in learning more about opportunities to engage directly with the sanctuary on topics related to interpreting the heritage of the Patawomeck Tribe of Virginia. ONMS contacted Chief Lightner again via email and phone on March 9, 2018, via email on April 17, 2018, and via phone on April 23, 2018, soliciting additional written comments. However, NOAA received no additional written response to these communications. ONMS looks forward to working with the Piscataway Conoy Confederacy and Sub-Tribes, the Piscataway Indian Nation, and the Patawomenck Tribe of Virginia.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 *et seq.,* requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the agency is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that original proposed rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble of that rule (82 FR 2254).

Although NOAA has made a few changes to the regulations from the proposed rule to the final rule, none of the changes alter the initial determination that this rule will not have an impact on small businesses included in the original analysis. NOAA also did not receive any comments on the certification or conclusions. Therefore, the determination that this rule will not have a significant economic impact on a substantial number small entities remains unchanged. As a result, a final regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA's designation of MPNMS would likely result in an increase in the number of requests for ONMS general permits, special use permits, certifications, and authorizations because this action proposes to add general permits and special use permits, certifications, appeals, and the authority to authorize other valid federal, state, or local leases, permits, licenses, approvals, or other authorizations. An increase in the number of ONMS permit requests would require a change to the reporting burden certified for OMB control number 0648–0141.

Nationwide, NOAA issues approximately 555 national marine sanctuary permits each year. MPNMS is expected to issue an additional 4 to 5 permit requests per year. This is between 0.7% and 0.9% increase in number of permits annually. NOAA estimates there are on average three responses per permit each, averaging a

public reporting burden for national marine sanctuaries permits of 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. NOAA renewed the existing OMB control number for ONMS permits in July 2018 (through 2021). Therefore, we estimate that the minimal amount of additional permits falls within the total estimated for the 2018 renewal. The form and application process for Mallows Bay permits would be identical to the one approved in 2018.

Comments on this determination were solicited in the proposed rule but no public comments were received. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Nicole R. LeBoeuf,

Acting Assistant Administrator, National Ocean Service.

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration amends 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for 15 CFR part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Revise § 922.1 to read as follows:

§ 922.1 Applicability of regulations in this part.

Unless noted otherwise, the regulations in subparts A, D, and E of this part apply to all National Marine Sanctuaries and related site-specific regulations set forth in this part. Subparts B and C of this part apply to the sanctuary nomination process and to the designation of future Sanctuaries.

■ 3. Amend § 922.3 by revising the definition of ''Sanctuary resource'' to read as follows:

§ 922.3 Definitions.

* * * * *

Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191. For Mallows Bay-Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a).

* * * * *

■ 4. Revise § 922.40 to read as follows:

§ 922.40 Purpose.

The purpose of the regulations in this subpart and in the site-specific subparts in this part is to implement the designations of the National Marine Sanctuaries by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160 and 922.180, respectively.

■ 5. Revise § 922.41 to read as follows:

§ 922.41 Boundaries.

The boundary for each of the National Marine Sanctuaries is set forth in the site-specific regulations covered by this part.

■ 6. Revise § 922.42 to read as follows:

§ 922.42 Allowed activities.

All activities (*e.g.,* fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in the site-specific regulations covered by this part, subject to any emergency regulations promulgated under this part, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

■ 7. Revise § 922.43 to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

The site-specific regulations applicable to the activities specified therein are set forth in the subparts covered by this part.

■ 8. Revise § 922.44 to read as follows:

§ 922.44 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.

(b) The provisions of this section do not apply to the following national marine sanctuaries with site-specific regulations that establish procedures for issuing emergency regulations:

(1) Cordell Bank National Marine Sanctuary, § 922.112(e).

(2) Florida Keys National Marine Sanctuary, § 922.165.

(3) Hawaiian Islands Humpback Whale National Marine Sanctuary, § 922.185.

(4) Thunder Bay National Marine Sanctuary, § 922.196.

(5) Mallows Bay-Potomac River National Marine Sanctuary, § 922.204.

(6) [Reserved]

§ 922.47 [Amended]

■ 9. Amend § 922.47(b) by removing ''subparts F through P, and subpart R'' and adding ''subparts F through P and R through T of this part'' in its place.

■ 10. Revise § 922.48 to read as follows:

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O and S and T of this part, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O and S and T, as appropriate.

For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by subpart R of this part in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O and S and T of this part, should be addressed to the Director and sent to the address specified in subparts F through O of this part, or subparts R through T of this part, as appropriate. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O of this part, or subparts R through T of this part, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O of this part, or subparts R through T of this part or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

■ 11. Amend § 922.49 as follows:

■ a. In paragraph (a) introductory text, remove ''subparts L through P, or subpart R'' and add ''subparts L through P of this part, or subparts R through T of this part'' in its place;

■ b. Revise paragraphs (a)(2), (b), (c), and (g).

The revisions read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) * * *

(2) The applicant complies with the other provisions of this section;

* * * * *

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part, or subparts R through T of this part, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of National Marine Sanctuaries at the address specified in subparts L through P of this part, or subparts R through T of this part, as appropriate. A copy of the application must accompany the notification.

* * * * *

(g) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

* * * * *

■ 12. Revise § 922.50 to read as follows:

§ 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in subparts L through P and R through T of this part, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under § 922.47; or

(iii) For those Sanctuaries described in subparts L through P and R through T of this part, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K and S and T of this part, any interested person may also appeal the same actions described in paragraphs (a)(1)(i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term ''appellant'' includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall

recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

■ 13. Add subpart S to read as follows:

SUBPART S—MALLOWS BAY—POTOMAC RIVER NATIONAL MARINE SANCTUARY

Sec.

§ 922.200 Boundary.

The Mallows Bay-Potomac River National Marine Sanctuary consists of an area of approximately 18 square miles of waters of the state of Maryland and the submerged lands thereunder, over, around, and under the underwater cultural resources in the Potomac River. The precise boundary coordinates are listed in appendix A to this subpart. The western boundary of the sanctuary approximates the border between the Commonwealth of Virginia and the State of Maryland along the western side of the Potomac River and begins at Point 1 north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point. From this point the boundary continues to the north approximating the border between Virginia and Maryland cutting across the mouths of streams and creeks passing through the points in numerical order until it reaches Point 40 north of Tank Creek. From this point the sanctuary boundary continues east across the Potomac River in a straight line towards Point 41 until it intersects the Maryland shoreline just north of Sandy Point in Charles County, Maryland. From this intersection the sanctuary boundary then follows the Maryland shoreline south around Mallows Bay, Blue Banks, and Wades Bay cutting across the mouths of creeks and streams along the eastern shoreline of the Potomac River until it intersects the line formed between Point 42 and Point 43 just south of Smith Point. Finally, from this intersection the sanctuary boundary crosses the Potomac River to the west in a straight line until it reaches Point 43 north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point.

§ 922.201 Definitions.

(a) The following terms are defined for purposes of this subpart:

(1) *Sanctuary resource* means any historical resource with the Sanctuary boundaries, as defined in § 922.3. This includes, but is not limited to, any sunken watercraft and any associated rigging, gear, fittings, trappings, and equipment; the personal property of the officers, crew, and passengers, and any cargo; and any submerged or partially submerged prehistoric, historic, cultural remains, such as docks, piers, fishing-related remains (*e.g.,* weirs, fish-traps) or other cultural heritage materials. Sanctuary resource also means any archaeological, historical, and cultural remains associated with or representative of historic or prehistoric American Indians and historic groups or peoples and their activities.

(2) *Traditional fishing* means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation or expansion, as identified in the relevant Final Environmental Impact Statement and Management Plan for this Sanctuary.

(b) All other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.,* and 16 U.S.C. 1431 *et seq.*

§ 922.202 Joint management.

NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, NOAA shall co-manage the Sanctuary in collaboration with the State of Maryland and Charles County. The Director shall enter into a Memorandum of Agreement regarding this collaboration that shall address, but not be limited to, such aspects as areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources.

§ 922.203 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) and (c) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a Sanctuary resource, except as an incidental result of traditional fishing. This prohibition does not apply to possessing historical resources removed from the Sanctuary area before the effective date of the Sanctuary designation.

(2) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, buoys, or other boundary markers related to the Sanctuary.

(3) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or any permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment; or to activities necessary for valid law enforcement purposes.

(c)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on sanctuary resources and qualities.

(2) Any existing military activity conducted by DoD prior to the effective date of the regulations in this subpart and as specifically identified in the Final Environmental Impact Statement and Final Management Plan for the Sanctuary (FEIS/FMP) is allowed to continue in the Sanctuary. The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to those existing military activities or to the following military activities conducted by DoD:

(i) Low-level overflight of military aircraft operated by DoD;

(ii) The designation of new units of special use airspace;

(iii) The use or establishment of military flight training routes;

(iv) Air or ground access to existing or new electronic tracking communications sites associated with special use airspace or military flight training routes; or

(v) Activities to reduce or eliminate a threat to human life or property presented by unexploded ordnances or munitions.

(3) New military activities that do not violate the prohibitions in paragraphs (a)(1) through (3) of this section are allowed. Any new military activity that is likely to violate sanctuary prohibitions may become exempt through consultation between the Director and DoD pursuant to section 304(d) of the NMSA. For purposes of this paragraph (c)(3), the term ''new military activity'' includes but is not limited to, any existing military activity that is modified in any way (including change in location, frequency, duration, or technology used) that is likely to destroy, cause the loss of, or injure a sanctuary resource, or is likely to destroy, cause the loss of, or injure a sanctuary resource in a manner or to an extent that was not considered in a previous consultation under section 304(d) of the NMSA.

(4) In the event of destruction of, loss of, or injury to a sanctuary resource or quality resulting from an incident, including but not limited to spills and groundings caused by DoD, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the sanctuary resource or quality.

§ 922.204 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities, other than DoD activities, are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Maryland or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.205 Permit procedures and review criteria.

(a) *Authority to issue general permits.* The Director may allow a person to conduct an activity that would otherwise be prohibited by this subpart, through issuance of a general permit, provided the applicant complies with:

(1) The provisions of subpart E of this part; and

(2) The relevant site-specific regulations appearing in this subpart.

(b) *Sanctuary general permit categories.* The Director may issue a sanctuary general permit under this subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories:

(1) Research—activities that constitute scientific research on or scientific monitoring of national marine sanctuary resources or qualities;

(2) Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resources or qualities; or

(3) Management—activities that assist in managing a national marine sanctuary.

(c) *Review criteria.* The Director shall not issue a permit under this subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors:

(i) The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and

(ii) Any indirect, secondary or cumulative effects of the activity.

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose.

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and eliminate, minimize, or mitigate adverse effects on sanctuary resources and qualities as much as possible.

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose.

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity.

(6) The applicant is professionally qualified to conduct and complete the proposed activity.

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit.

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate.

§ 922.206 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.203(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.49 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(c) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(d) Requests for findings or certifications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Mallows Bay-Potomac National Marine Sanctuary, 1305 East West Hwy., 11th Floor, Silver Spring, MD 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) For an activity described in paragraph (a) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.203(a)(1) through (3) provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 180 days of the **Federal Register** notification announcing of effective date of the Sanctuary designation, of the

existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this section; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.203 may conduct the activity without being in violation of applicable provisions of § 922.203, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.

(g) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(h) The Director may amend any certification made under this section whenever additional information becomes available that he/she determines justifies such an amendment.

(i) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(k) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

Appendix A to Subpart S of Part 922—Mallows Bay-Potomac River Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

TABLE 1—COORDINATES FOR SANCTUARY

Point ID	Latitude	Longitude
1	38.39731	−77.31008
2	38.39823	−77.31030
3	38.39856	−77.31059
4	38.39886	−77.31074
5	38.39917	−77.31067
6	38.40014	−77.31074
7	38.40090	−77.31145
8	38.40138	−77.31215
9	38.40197	−77.31236
10	38.40314	−77.31278
11	38.40658	−77.31377
12	38.40984	−77.31465
13	38.41388	−77.31692
14	38.41831	−77.31913
15	38.41974	−77.31930
16	38.42352	−77.31971
17	38.42548	−77.32030
18	38.42737	−77.32081
19	38.43091	−77.32240
20	38.43163	−77.32242
21	38.43350	−77.32263
22	38.43384	−77.32269
23	38.43430	−77.32265
24	38.43461	−77.32229
25	38.43498	−77.32146
26	38.43526	−77.32057
27	38.43522	−77.32040
28	38.47321	−77.31845
29	38.47434	−77.31874
30	38.47560	−77.31752
31	38.47655	−77.31686
32	38.47748	−77.31666
33	38.47821	−77.31604
34	38.47871	−77.31554
35	38.47885	−77.31563
36	38.47905	−77.31559
37	38.47921	−77.31578
38	38.47943	−77.31592
39	38.47985	−77.31592
40	38.48493	−77.31335
41 *	38.48554	−77.27298
42 *	38.39793	−77.25704
43	38.39731	−77.31008

Note 1 to table 1 of this appendix: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Appendix B to Subpart S of Part 922—Mallows Bay-Potomac River Marine Sanctuary Terms of Designation

Terms of Designation for the Mallows Bay–Potomac River National Marine Sanctuary

Under the authority of the National Marine Sanctuaries Act, as amended (the ''Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.,* certain waters and submerged lands located off the Nanjemoy Peninsula of Charles County, Maryland, and along the tidal Potomac River and its surrounding waters are hereby designated as a National Marine Sanctuary for the purposes of providing long-term protection and management of the historical resources and recreational, research, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the historical resources and recreational, research, and educational qualities of the Mallows Bay-Potomac River National Marine Sanctuary (the ''Sanctuary''). Section 1 of Article IV of this appendix lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

The Mallows Bay-Potomac River National Marine Sanctuary consists of an area of approximately 18 square miles of waters of the State of Maryland and the submerged lands thereunder, over, around, and under the underwater cultural resources in the Potomac River between Stafford County, Virginia, and Charles County, Maryland. The western boundary of the sanctuary approximates the border between the Commonwealth of Virginia and the State of Maryland for roughly 6 miles along the Potomac River, beginning north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point and continuing north past Widewater, VA, and Clifton Point to a point north of Tank Creek. From this point the sanctuary boundary crosses the Potomac to the east until it intersects the Maryland shoreline just north of Sandy Point in Charles County, MD. From this point the eastern boundary of the sanctuary, approximately 8 miles in total length, follows the Maryland shoreline south past Mallows Bay, Blue Banks, and Wades Bay to a point just south of Smith Point. From this location the sanctuary boundary crosses the Potomac River to the west back to its point of origin north of the mouth of Aquia Creek near Brent Point on the Virginia side of the river.

Article III: Special Characteristics of the Area

Mallows Bay-Potomac River National Marine Sanctuary and its surrounding waters contain a diverse collection more than 100 known historic shipwreck vessels dating back to the Civil War and potentially dating back to the Revolutionary War, as well as archaeological artifacts dating back 12,000 years indicating the presence of some of the region's earliest American Indian cultures, including the Piscataway Indian Nation and the Piscataway Conoy Confederacy and Sub-Tribes of Maryland. The area is most

renowned for the remains of over 100 wooden steamships, known as the ''Ghost Fleet,'' that were built for the U.S. Emergency Fleet between 1917–1919 as part of U.S. engagement in WWI. Their construction at more than 40 shipyards in 17 states reflects the massive national wartime effort that drove the expansion and economic development of communities and related maritime service industries including the present-day Merchant Marines. The area is contiguous to the Captain John Smith Chesapeake National Historic Trail, the Star Spangled Banner National Historic Trail, the Potomac Heritage National Scenic Trail and the Lower Potomac Water Trail which offer meaningful educational and recreational opportunities centered on the region's culture, heritage and history. Additionally, the structure provided by the vessels and related infrastructure serve as important habitat to thriving populations of recreational fisheries, bald eagles, and other aquatic species. The area's listing on the National Historical Register of Places in 2015 codifies the historical, archaeological and recreational significance of the Ghost Fleet and related maritime cultural heritage sites in and around Mallows Bay-Potomac River National Marine Sanctuary.

Article IV: Scope of Regulations

Section 1. Activities Subject to Regulation. The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the historical resources and recreational, research and educational qualities of the area:

a. Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a Sanctuary resource, except as an incidental result of traditional fishing (as defined in the regulations).

b. Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, buoys, or other boundary markers related to the Sanctuary.

c. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation issued under the Act.

Section 2. NOAA will not exercise its authority under the NMSA to regulate fishing in the Sanctuary.

Section 3. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource; or minimize the imminent risk of such destruction, loss, or injury, any activity, including those not listed in Section 1, is subject to immediate temporary regulation. An emergency regulation shall not take effect without the approval of the Governor of Maryland or her/his designee or designated agency.

Article V: Relation to Other Regulatory Program

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated by other Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

Section 2. Other Regulations, Licenses, and Permits. If any valid regulation issued by any federal, state, Tribal, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director of the Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, or designee, in consultation with the State of Maryland, to be more protective of Sanctuary resources and qualities shall govern. Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any federal, state, Tribal, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or designee, as a result of this designation, or as a result of any Sanctuary regulation, if such lease, permit, license, approval, or other authorization, or right of subsistence use or access was issued or in existence as of the effective date of this designation. However, the Secretary of Commerce or designee, in consultation with the State of Maryland, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Section 3. Department of Defense Activities. DoD activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on sanctuary resources and qualities. Any existing military activity conducted by DoD prior to the effective date of the regulations in this subpart and as specifically identified in the Final Environmental Impact Statement and Final Management Plan for the Sanctuary (FEIS/FMP) is allowed to continue in the Sanctuary. The prohibitions in § 922.203(a)(1) through (3) do not apply to those existing military activities listed in the FEIS/FMP or the military activities conducted by DoD listed in § 922.203(c)(2). New military activities that do not violate the prohibitions in paragraphs (a)(1) through (3) of this section are allowed. Any new military activity that is likely to violate sanctuary prohibitions may become exempt through consultation between the Director and DoD pursuant to section 304(d) of the NMSA. The term ''new military activity'' includes but is not limited to, any existing military activity that is modified in any way (including change in location, frequency, duration, or technology used) that is likely to destroy, cause the loss of, or injure a sanctuary resource, or is likely to destroy, cause the loss of, or injure a sanctuary resource in a manner or to an extent that was not considered in a previous consultation under section 304(d) of the NMSA. In the event of destruction of, loss of, or injury to a sanctuary resource or quality resulting from an incident, including but not limited to spills and groundings caused by DoD, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the sanctuary resource or quality.

Article VI. Alteration of This Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public meetings, consultation according to the NMSA.

[FR Doc. 2019–14368 Filed 7–5–19; 8:45 am]

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